United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, FRIDAY, FEBRUARY 10, 2006 *No. 16*

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2006, at 2 p.m.

Senate

FRIDAY, FEBRUARY 10, 2006

(Legislative day of Thursday, February 9, 2006)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, from the rising of the Sun to its setting, Your name is great among the nations.

We thank You for Your goodness and for Your wonderful works in our world. Thank You for satisfying our souls' longing for the transcendence.

We pray for our Senators and their staffs. Help them to stand humbly in Your presence, confident of Your power to guide them through our world's turbulence. Keep them from confusion and sin. Give them insights for solving the riddles of our planet and imbue them with compassion. Before they seek forgiveness, help them to forgive. Before they ask for mercy, help them to be merciful.

Give us all such inclusive spirits that we will be led from all bigotry and prejudice. Help each of us to abide in Your love, for You are our source of strength, comfort, and fortitude.

We pray this in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, we will have a brief period of morning business before we resume consideration of S. 852, the asbestos bill. Although Members may come down and make statements relative to the bill, there are going to be no rollcall votes today, as I explained last night.

Last night, we vitiated cloture and confirmed a nomination that was scheduled for a vote today; and given that action, it is not necessary to have that vote this morning.

We did hope to consider and vote on amendments during today's session. However, at this time, there is a motion to waive the budget pending, and that will require further debate.

In addition, we are approaching the final week prior to the President's Day recess. We want to use all our time effectively to work through the asbestos bill and other remaining business. I talked with the Democratic leader about a number of issues that we will address over the course of the next 8 or 9 days. There is the tax reconciliation bill that has gone to conference. We have 10 hours on that. There are the issues surrounding the PATRIOT Act that needs to be reauthorized.

Great progress has been made over the last 24 hours in a bipartisan way. At the close of business today, I will outline next week's schedule. Senators should plan on a very busy week prior to the recess, with voting over the course of next week.

ASBESTOS

I briefly want to comment on the asbestos bill and where we are today and the significance of this underlying bill. We have been on this for a week, in terms of debate. I think my colleagues and the American people realize how important this bill is and why it is the first major piece of legislation we are taking in this current session of Congress and have brought it to the floor.

I want to share briefly what my personal experience is with this disease, and it comes from having spent many months in Southampton, England, working as a surgeon a couple of decades ago. To me, those images apply today, of individuals, patients suffering from cancer from asbestos, asbestosis, and the clinical manifestations of the diseases related to it, such as mesothelioma. As we all know, based on the discussions that have taken place, this asbestos fiber is one that causes a reaction that can be a localized reaction in the lungs or a systemic reaction, and it is particularly prevalent in workers in shipyards; and, of course, Southampton was and has been one of the great shipyards in the world. Therefore, you see a lot of this mesothelioma.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The mesothelioma in those patients starts with a shortness of breath that is uncomfortable, but then it gradually builds to this gasping for every single breath. And then it turns into the agony of not getting enough breath into your lungs. It starts with a little bit of a cough associated with that shortness of breath, and that cough eventually turns into a hacking cough with blood coming forth, a loss of the voice, initially becoming coarse and raspy. The symptoms of the most common type of mesothelioma expand to the point that surgery is, in many cases, tried. It is a difficult surgery because of the encasement of the lung with the reaction to this asbestos fiber. It is malignant cancer.

I say that because the reality is there are many patients, victims of exposure to asbestos, who are not being fully compensated by the system we have, the system that is outdated, that is inefficient and unfair. Everybody agrees with that.

If there is one thing we have been able to accomplish over the last week, it is that it is an unfair process that results in a lot of waste and inefficiency—the fact that patients themselves, the victims—out of the dollars that should be directed to them—only get 42 cents of the dollar that is put on the table to compensate them, and that is simply unfair. Our discussions and debate over the last week have pointed to the fact that 58 cents of the dollar that should be going to the victims is being spread through a system that is inefficient and goes, in large part, to the pockets of trial lawyers—not all trial lawyers, but the few who are taking advantage of this system.

That is why it is so important for us to address this FAIR Act, which we call it, to debate it and not use procedural moves to kill it. Because once we kill this bill or it is moved off the table, we are not going to be able to come back to it, from a realistic standpoint. This year is so short that we have to address it now or never. That is why we have to be very careful, in terms of having procedural moves that are made and people hiding behind those procedural moves and not addressing the real substance of the bill. The bill itself has strong bipartisan support. We talk about all of the partisanship that characterizes so much of this body in Washington, DC, and in Congress. This bill is not partisan. It is not a Republican or Democratic bill. It has strong bipartisan support.

I have to applaud the leadership of Chairman SPECTER and Senator LEAHY on this bill, taking it through the Judiciary Committee. I want to also point out that people say we have only had 1 day on amendments. We were ready to bring the bill up on Friday. We have had it Monday, Tuesday, Wednesday, Thursday, and now it is Friday. We have had some slow walking on the bill. We had to file a cloture motion to proceed to the bill. It shows the reluctance by some people to say it is a problem and that it is one that we need to address and fix. But that cloture vote was successful. That postponement was overridden by the will of this body.

About midweek, the other side reversed course and decided to let us debate this bill, and that debate has begun in earnest. We have had a great debate, with a much better understanding among our colleagues and among the American people as to how big this problem is. The fact that the victims, the patients whom physicians are treating, are not being treated fairly by this system, that must be fixed. We have those trial lawyers who are reaping the benefits of this broken system, taking advantage of the system, taking advantage of the funds that are to be used as compensation for those victims or potential victims.

The FAIR Act is a trust fund approach, which is a comprehensive approach. We had good debate yesterday with Senator CORNYN's amendment, in terms of a medical criteria bill. The one item that came out in that discussion is that the trust fund approach in the FAIR Act is the comprehensive approach. Senator CORNYN proposed that we resolve the real problem with a medical criteria proposal, which many of us support in terms of concept, but you have to look at who is left out. The unimpaired claimants are left out of that system. The trust fund addresses those people who may be unimpaired but who are victims and will be victims, from a medical standpoint, in the future.

The bill we talked about yesterday—there is a sort of incompleteness of that bill, but reflecting on the more comprehensive approach of the underlying bill and the fact that it did not address the fact that 40 percent of the awards are going to the victim and 60 percent is going to the system. Wealthy trial lawyers are the real beneficiaries here, which is not addressed in the smaller bills that may be brought forth or the smaller amendments brought to the floor.

It was mentioned yesterday that the medical criteria bill itself leaves out veterans. Again, that is addressed in the underlying FAIR Act, which is on the floor. Under the medical criteria bill, they could not sue the Government for their injuries—the veterans of service who are fighting wars all over the globe—because of sovereign immunity. I was also worried about those victims who worked at companies that are now bankrupt. Again, the medical criteria bill does nothing to ensure that attorneys are prevented from taking from those victims that share of compensation that should be going to the victims.

I know there are a lot of businesses, today and yesterday, that are lobbying Senators on both sides of the aisle because they are concerned that the underlying bill will hurt them in some way. I know some of them argue that the medical criteria approach is the better solution because it is less complicated than the trust fund. I respect that position. It is a position that we and the leadership and the leaders on this bill, the sponsors, are addressing. We will make sure that we do all we can to ensure that no company is hurt, no company goes bankrupt because of the trust fund approach.

Senator KYL's amendment, which is yet to be debated and fully considered, addresses that very important aspect, to make sure companies are not unduly hurt by the trust fund approach.

I firmly believe we should do what is in the interests of the Nation right now, not just what is in the interests of one company or another, and that is addressed in the FAIR Act—again, open for debate and open for amendment. That is our responsibility, to tackle these big issues.

The underlying bill is not perfect. It needs to remain on the floor. It needs to remain on the floor for discussion and debate. It is a comprehensive approach that I strongly support, that the administration strongly supports, and that much of the leadership in the House, in my conversations with them, strongly supports.

If we do not pass this bill, those victims whom I opened with, the people who are being hurt by the cancer, who are struggling for those last breaths, who do need that operation, are simply not being treated fairly and will not be treated fairly in the future.

Meaningful solutions to these tough and challenging problems are what we are debating. Again, I commend the chairman of the Judiciary Committee for his tremendous work on this important issue.

Mr. SPECTER. Will the majority leader yield for a very brief discussion on this point?

Mr. FRIST. Absolutely.

Mr. SPECTER. Mr. President, I thank the leader very much for the comments he just made. I would like to pick up on just a couple of them.

What is generally misunderstood, notwithstanding how many times we have said it, is that there is no Federal money in this bill. The bill is ironclad that the Federal Government will have no obligation at all, and even though it has been said repeatedly, talking to Senators in the well of the floor yesterday, it has not really sunk in. I can understand why it has not sunk in—because the bill is so complicated—but it is worth repeating. There is no Federal money in the bill.

The objection which is raised is that some future Congress may want to add money to the bill from the Federal Treasury. But that is not a valid consideration for this Congress. We are doing the best job we can here in the year 2006. But if some future Congress 20 years from now or 30 years from now or 15 years from now makes another decision, we have to respect that. We are not so smart to handle the current problems, let alone anticipate what is going to happen a decade or more from

now. So when people raise the issue about more expenditures, they are not doing it because of this bill; they are doing it because of what some future bill may provide.

There is another consideration which the leader and I were just discussing which is worth commenting about on the floor so others may hear it, and that is that out of respect for the committee system, this bill ought not to fall on a budget point of order. The Judiciary Committee has spent years—really working on it for decades but intensively for the past 3 years—and we passed it out 13 to 5, all 10 Republicans for it, albeit with some reservations, and 3 Democrats—Senator LEAHY, Senator FEINSTEIN and Senator KOHL. It is bipartisan.

People are surprised to hear that on the point of order, it is the Budget Committee which makes the determination and not the Parliamentarian. When I tell my colleagues that, they are surprised. But as I conferred with the Parliamentarian yesterday, he confirmed the fact that the practice here is not to have the Parliamentarian rule but to have the Budget Committee rule and really to have the chairman make the decision.

After working intensively on this issue for the 25 years I have been here, and intensely for the past 3 years, it seems to me as a matter of basic equity that we ought not to have this bill pulled from the floor by a single vote when we are in the midst of adding amendments which may cure all of the problems people see. Senator CORNYN, for example, who proposed the medical criteria bill yesterday, has told me that he does not favor upholding the point of order, that he thinks the bill ought to go forward. Senator CORNYN has said he may have as many as four more amendments. Senator KYL has an amendment on the floor now which will protect the smaller companies. Senator COBURN may have an amendment on tightening up the medical criteria.

When we have worked for 3 years intently, why not let this bill stand for 3 more days next week to see if we can work out the problems?

I submit to all of my colleagues, and especially my colleagues on the Budget Committee, this is not where it ought to be decided by a supermajority. This body had very intensive debate on when a filibuster ought to be allowed, and we came to the conclusion that it should be extraordinary circumstances. I think the analogy right on all fours, as we say in the law—on all fours. To defeat this bill by a supermajority, there ought to be some extraordinary circumstance, which there is not. This may be too strong a word, but, frankly, this is how I feel about it: I believe it is insulting to the Judiciary Committee to have these years of work at risk by a single vote because of what another committee says, when we have gone through this bill A to Z and we are still open for business to make changes.

It is worth note, the editorial support which I think is a bit removed.

We have already had the New York Times speak very forcefully.

The Washington Post says, in part, ''legislation that serves the public interest'' in coming out for the bill.

The Washington Times, which is noted for its more conservative view, endorses the bill today, saying, ''this bill should pass.''

One of the issues which the Washington Times raises is the key one raised by the Budget Committee as to what is going to happen in the future; that is, as they say:

and how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

OK, we are still working on it. But the Washington Times faces up squarely to that consideration as to what a future Congress may do.

I have found that, while talking to Senators individually and they begin to understand it, there is a good response. I have visited individually with many Senators on both sides of the aisle, and I intend to continue to do so when we have the time to do so. But it is my hope that my colleagues will look closely at respect for the committee system and what the Judiciary Committee has done here and will at least give this bill a few more days and will not superimpose a supermajority on legislation which ought to be decided, as our customary Democratic procedures are, by a democratic vote.

I thank the distinguished leader of our party for all of his hard work on this, bringing it to the floor, and his steadfast support, and notify all of our Republican colleagues that the leader and Senator MCCONNELL and Senator SESSIONS and Senator DEWINE and maybe others and I will be talking individually, and I put my Democratic colleagues on notice, too, that I am about to call them up for a private meeting.

I ask unanimous consent that the editorials I referenced from today's Washington Post and Washington Times be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From washingtonpost.com, Feb. 10, 2006]

FORWARD ON ASBESTOS

In a triumph of good sense and bipartisan cooperation, the Senate voted on Tuesday to go forward with a bill that would fix the broken asbestos litigation system. Hundreds of thousands of asbestos injury claims have already landed in the courts, contributing to the bankruptcy of more than 70 companies. Without reform, this process will drag on, triggering the bankruptcy of yet more firms, many of which have only tenuous asbestos connections, because the main firms responsible have already gone under. Meanwhile, many who are ill from asbestos-related diseases won't be able to get timely compensation or, in some cases, any compensation. Unless the bill passes, Navy veterans, for example, will go uncompensated for diseases caused by asbestos on ships. Veterans are not allowed to sue the government, and many of the shipbuilders are long since bankrupt.

The bill will be debated and amended, and it may face a second attempted filibuster before it gets a vote. Some amendment may be reasonable at the margins, but the bill's central idea—to replace litigation with a $140 billion compensation fund to be financed by defendant companies and their insurers—must be preserved. Democrats complain that the fund won't have enough money to compensate asbestos victims; Republicans complain that the fund will have too much money, the raising of which will constitute a burden on small and medium-size firms. The fact that the bill is being attacked from both directions suggests that its authors, Sens. Arlen Specter (R–Pa.) and Patrick J. Leahy (D–Vt.), have balanced competing interests in a reasonable manner.

Unfortunately, the bill's critics are not always so reasonable. Sen. Harry M. Reid of Nevada, the Democratic minority leader, has complained, ''One would have to search long and hard to find a bill in my opinion as bad as this.'' He has even described the legislation as the work of lobbyists hired by corporations to limit asbestos exposure. But the truth is that the bill's main opponents are trial lawyers, who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are in fact model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

[From the Washington Times, Feb. 10, 2006]

THE ASBESTOS DEBATE

There are three questions the Senate should focus on as it considers the Fairness in Asbestos Injury Resolution Act: Will the proposed $140 billion asbestos trust fund actually cost $140 billion, or will its fine print eventually require it to pay out much more? Can the medical criteria be tightened to ensure that only people who have genuinely suffered harm from asbestos are compensated? And how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

This bill should pass; Senators Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggled with a resolution. The victims and their families deserve to be made whole.

One good sign is the 98–1 Senate vote Tuesday to move forward, indicating broad agreement that the FAIR Act is acceptable as a starting point for the full Senate's debate. The other is trepidation from Senate Minority Leader Harry Reid: After making noises about a filibuster, Mr. Reid said the bill benefited ''a few large companies'' while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants AllState and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts. Under the FAIR Act, fees for lawyers top out at five percent of the award—far less than they get in court.

Of course, there are good reasons to worry about the ''little guy''—just not the ones Mr. Reid suggests. If previous federal ''trust fund'' schemes are any indication, this fund could bleed billions of dollars only a few years from now and demand either a federal bailout or a return to the courts. The first is bad for the average taxpayer; the other is

bad for most claimants. As for the first, the nonpartisan National Taxpayers Union opposes the trust fund on the grounds that a bust is likely. It calls the fund ''a fiscal time bomb.'' The second would land claimants back in limbo in courts (to the great pleasure of asbestos lawyers, of course, who clog up the system with questionable cases).

The precedents show how daunting this month's debate will be. As we've reported previously, only one of the many smaller trust funds created over the years has been able to meet its obligations, according to Francine Rabinovitz, a trust-fund expert at the University of Southern California. Last year she told Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, that ''none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims.'' Claims against the Johns Manville bankruptcy fund—one flawed effort to solve asbestos-injury claims—outstripped resources by a factor of 20.

That begs some questions. Will this $140 billion fund ''sunset'' in three years like its conservative critics say it will? Even the Congressional Budget Office predicts it will bleed $6.5 billion a year by 2015.

What about the medical criteria? A group of conservative senators on the Judiciary Committee worried about the fund's solvency cited this among concerns when they sent the bill to the Senate floor last year. Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, said that they were ''deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants.''

This debate will play out fully in the Senate over the coming days. In the meantime, it's worth pointing out what the FAIR Act offers that nothing previously has: A light at the end of the tunnel for claimants. Under FAIR, compensation ranges from $25,000 for people who suffer breathing difficulties to as much as $1.1 million for victims of the deadly cancer mesothelioma. It has taken long enough to get this far. The Senate is close to leading the way out.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Very briefly in response, this is an important bill that, again, is not a partisan bill at all. If you look at the votes today, you will see the split is between each caucus. I say that because so many bills come to the floor as partisan bills or bills proposed by one party, and they see such discussion and procedural moves. It is incumbent upon each Senator, looking within themselves and their own conscience, to ask the question: Is this a problem that deserves fixing?

I believe, based on the discussions today—that is the good thing about this last week—that it is a tragedy in terms of the victims, in terms of the jobs lost, in terms of the pensions lost—all due to a broken system. It would be a tragedy if we did not address it. We have a bipartisan bill which has come out of committee. It is open for debate on the floor of this body.

Just to clarify, we do have pending a budget point of order that needs to be discussed. Every Senator must understand what our chairman was saying through conversations because we will have a vote early next week on this point of order. If the point of order is upheld, then the bill itself disappears and we have other legislation onto which we will move. That means we will not have fulfilled our obligation, our responsibility through having a bipartisan bill come out of the Judiciary Committee which is brought to the floor for debate and discussion, recognizing a huge problem faces the American people. That responsibility would be shoved aside.

I encourage my colleagues to look at this point of order, what it means in terms of procedure, and then answer the question, Is there a problem out there? And if the answer is yes, now is the time to fix it.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ISAKSON). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business until 10 a.m.

The Senator from Missouri is recognized.

Mr. TALENT. How long is the morning business going on, Mr. President?

The PRESIDING OFFICER. Until 10 a.m.

Mr. TALENT. I ask unanimous consent to speak as in morning business for up to 30 minutes.

The PRESIDING OFFICER. Is there objection? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I request recognition after the Senator and that I be allocated 30 minutes as well.

The PRESIDING OFFICER. The Senator from Missouri has asked unanimous consent that he be recognized for up to 30 minutes. Is there objection?

Mr. KENNEDY. Reserving the right to object, I wonder if the Senator would extend the unanimous consent request to include that I be recognized following him and that I be recognized for 30 minutes.

Mr. TALENT. I will so modify my request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TALENT. Mr. President, the Lord willing and the creek don't rise, as my mom used to say, I will not use the whole 30 minutes.

The PRESIDING OFFICER. The Senator is recognized.

CLONING

Mr. TALENT. Mr. President, 9 years ago, scientific advances in the technology of nuclear transfer permitted the cloning of a sheep named Dolly. The immediate reaction of most Americans, and most Members of Congress, was to try to make certain that this process was never used to create a human being, never allowing a human Dolly to be cloned. I remember thinking at the time that I personally did not want to live in a world where I was walking down the street and saw myself coming in the opposite direction.

Why this reaction? After all, cloning is an acceptable thing in the agricultural world. The difference, of course, is that human beings have a unique dignity. When parents decide to have a child, they do it for the benefit of the baby, to nurture that new life to live up to the potential and live out the plan which God created for him or her. All of us agree that people should not be cloned because the only reason you clone something is to use it, and human beings should and do exist for reasons of greater dignity than simply to be used by others. I think we all understand that if we were ever to allow a race of clones to be created as workers or body parts warehouses for society, we would cheapen the dignity of humanity to the point where none of the rest of us would be safe in our lives or freedoms.

Yet, despite this shared impulse against cloning, it has been 9 years since Dolly was created, and no safeguards against cloning have passed the Congress. Nor are there prospects of any such bill passing in the near future. The reason is that there is an area of overlap between the issues of cloning and stem cells. Many scientists believe that stem cells from a cloned human embryo may have unique advantages for medical research. This part of the scientific community has resisted the total ban on cloning which has been introduced each of the last 6 years in the belief that such a ban would inhibit one important aspect of stem cell research. Both sides have settled into what has now become a rigid stalemate, like the Western Front in WWI. Even though the idea of cloning human beings is morally repugnant to most of us, there is currently no Federal prohibition or even regulation of any aspect of human cloning, or for that matter of warehousing body parts and creating ''fetus farms,'' and no prospect of getting such prohibitions.

I have spent the better part of a year researching this issue, meeting with people on all sides: groups who oppose cloning embryos to get stem cells, scientists who support it, parents who don't know who or what to believe but who are desperate for a cure for their children. Many to whom I have spoken have strong opinions about the underlying moral issues. In every case, I respected the sincerity and passion of those whom I spoke with. I have strong opinions of my own.

I believe human beings are precious. I am concerned about the tendency of our society to devalue people because they are too old, too young, or too inconvenient to have around. At the same time, I understand the desperation of parents whose children are sick

or dying and who are desperate for treatments that will make them well. I often tour neonatal units. It breaks my heart to see children there fighting for life. I also meet with kids who are struggling heroically with chronic disease. I want to find cures for these children—but I also want them to grow up in a society that values them for their inherent dignity, for who they are, regardless of their age, infirmity, or level of achievement in the world's eyes.

Just because we are deadlocked about what to do in the present is no reason we cannot agree on what we want the future to be. We find ourselves at the beginning of a great new era of biology. I believe we can and should determine what our children's future will look like, and what objectives we want for our Nation. And, clearly, for all of us this would include progress in biomedicine built upon a solid foundation of moral principles in defense of human dignity.

I have come to the floor of the Senate today because there are just such hopeful prospects for the future. As is so often the case, the technology that generates the problem may also provide the solution. Just as recent scientific advancements created a moral dilemma, discoveries that are even more recent may provide a way out. Within a short time, it may be possible to get the exact stem cells researchers say they need without cloning an embryo. This means that we need no longer argue about such important but difficult questions as whether an embryo is fully a person or whether and when stem cell research may actually produce medical cures. The good news is that we can effectively prohibit human cloning and do it with a consensus that heretofore has not been possible; we can honorably reconcile our positions without requiring anyone to compromise their principles—provided that we are willing to approach the cloning issue humbly and practically, and provided also that both sides really do want what they say they want.

Mr. President, one of the difficulties with this issue is that much depends on understanding at least the basics of the science involved, and the science is complicated—especially for those of us who limped through high school biology. So I want to review some of the facts about stem cells and in particular about how stem cell research intersects with cloning.

A stem cell is a cell that does not itself perform a physiological or structural function in the body but instead serves as a source for cells that do perform such functions. During early development, stem cells help form the human body; in adult life, stem cells stand in reserve, to be used as needed to create new blood cells, brain cells, liver cells, and many other cells with a specific function in the body.

In current scientific language, there are two basic categories of stem cells: first, adult stem cells and, second, embryonic stem cells, which are also called pluripotent stem cells.

Adult stem cells exist all over the body. Their purpose is to maintain and repair damaged tissue. Science has known about, researched and used adult stem cells for years. To date, adult stem cell research has resulted in the development of a variety of therapeutic treatments for diseases: over 60 peer-reviewed treatments using adult stem cells exist today. These treatments include autoimmune diseases such as lupus and multiple sclerosis and blood diseases such as sickle cell disease.

A few years ago, American scientists announced that they had isolated stem cells from human embryos as well. These stem cells, called, naturally, ''embryonic'' stem cells, are the cells that, during the first days of life, begin dividing and differentiating, developing into the various parts of the body. Currently the cells can only be obtained from embryos created through in vitro fertilization, IVF. Once isolated, however, embryonic stem cells are self-replicating, which means an individual embryonic stem cell can produce tens of thousands of additional stem cells.

There is an important difference between ''adult'' and ''embryonic'' stem cells. Adult stem cells are found in the developed tissue or organs of the body and they can in general differentiate only to yield the cell types of the tissue or organ from which they came. In general, that means that an adult stem cell can become only one kind of tissue. A heart stem cell, for example, becomes heart tissue; a liver adult stem cell becomes liver tissue, and so on. Remember, the primary roles of adult stem cells are to maintain and repair the tissue in which they are found.

An embryonic stem cell, on the other hand, is considered ''pluripotent.'' That means an embryonic stem cell could develop into any of the different cell types of the body. They could in theory, if properly controlled, be commanded to become any one of a number of different tissues. This is logical, because embryonic stem cells are derived from the very cells in the embryo that are awaiting genetic instructions on what organ or other part of the body they will become. It is important to remember that the major reason science wants embryonic stem cells is because of this pluripotent quality. The fact that pluripotent stem cells come from embryos is a problem rather than a good thing, because of the obvious ethical concerns in extracting a cell from a human embryo and thereby destroying the embryo.

Whereas the value of adult stem cell research is accepted by consensus, there is more controversy over the scientific efficacy of embryonic stem cell research. The pluripotency of embryonic stem cells gives them more diverse potential, since they can in theory be ''programmed'' to become any kind of tissue. In practice, controlling pluripotent stem cells enough to produce actual treatments has been very difficult, and researchers to whom I have spoken, while supporting research with these cells, have emphasized that cures are likely to be many years away, if they come at all.

Because of this, some have argued that pluripotent stem cell research is of negligible value and that we should feel no compunction about preventing such research. But too many scientists of different backgrounds have insisted otherwise for me to be certain of that conclusion. The truth is that it is simply too soon to know whether science can control pluripotent stem cells well enough to use them for medical therapies; to the extent there is a consensus on this issue, it is that such research is speculative but promising.

Even more recently science has determined that a third category of stem cells may be useful. These stem cells are genetically matched to the patients who need the cell therapies. For several years, scientists have believed that it may be possible to derive these genetically matched stem cells through a process called somatic cell nuclear transfer or SCNT.

In SCNT the nucleus of an unfertilized human egg, which contains 23 chromosomes, is removed and replaced by the nucleus of an adult body cell. The new ''transferred'' nucleus would be genetically complete, containing all 46 chromosomes of the donor cell. This imitates the effect of normal fertilization in which the sperm's 23 chromosomes add to the egg's 23 to make the needed 46. The egg with the transferred nucleus is then stimulated and begins dividing like a naturally fertilized embryo. If all goes well, in 4 to 5 days it gets to a stage of development, called the blastocyst, from which embryonic stem cells would be harvested. These stem cells would be distinct from the embryonic stem cells derived from IVF in that they would genetically match the donor. Proponents of SCNT are hopeful that assuming they can overcome the challenge of controlling the development of any pluripotent stem cell, and assuming that they can successfully complete SCNT at all, these genetically matched stem cells would be superior to other forms of pluripotent stem cells in curing disease.

Again, stem cell research in general has nothing to do with SCNT. It is only with respect to one particular type of embryonic stem cell—a stem cell which no one has ever developed but that might have incremental advantages over other embryonic stem cells—that science wants to do SCNT. The reason SCNT is controversial is that it is a form of cloning. In fact, it is the same technique that was used successfully to create Dolly the sheep.

Both the proponents and opponents of SCNT agree that, if successful, it would result in the cloning of a human embryo.

Some supporters of SCNT, however, argue that a human embryo does not

become a human being until it is implanted in a womb, and that unless researchers intend to implant the cloned embryo, SCNT should be permitted. The opponents of SCNT believe just as passionately that a human being does not depend on developmental age, and that a human embryo is therefore a human being from its beginning. From this perspective SCNT is the creation of a human being for purely instrumental use exactly what, in theory, a cloning ban is designed to prevent. But up until now, both sides have assumed that any nuclear transfer procedure which would result in the creation of pluripotent stem cells must first have produced a human embryo.

Yet the most recent scientific developments suggest that this is not true. In May 2005 the President's Council on Bioethics released a white paper entitled ''Alternative Sources of Human Pluripotent Stem Cells.'' In this report, the council outlined four specific proposals for a scientific solution to our current political impasse over stem cell research. In the months since that report was issued, progress in each of these approaches has been reported in the leading peer-reviewed scientific journals. Research on one of these proposals, altered nuclear transfer, is especially encouraging and suggests that all the scientific and medical goals of SCNT could be realized without the cloning or destruction of human embryos.

Remember, with somatic cell nuclear transfer researchers would take the genetic material out of a human egg, replace it with the complete genetic code of the donor, and then shock it so that it starts to divide. In theory, an organism created in such a way—artificially rather than naturally—could divide and grow until it became an adult human being. Altered nuclear transfer is a form of somatic cell nuclear transfer in that it uses nuclear transfer but with a preemptive alteration of the genetic material. To put it simply, the somatic cell is altered prior to being transferred. The resultant entity would be capable of producing pluripotent stem cells but because of the preemptive alterations during the transfer process it would be incapable, from its creation, of the organization and developmental potential that are the defining characteristics of an embryo.

Altered nuclear transfer is a broad umbrella concept with many possible specific approaches. For example, one proposed approach using ANT is called ANT-OAR. This form of ANT involves reprogramming the somatic cell to enter directly into a pluripotent stem cell state, without going through any of the normal developmental stages. All of this means that ANT could create genetically matched stem cells without ever having to produce anything with the capacity to be considered a human embryo.

This distinction between SCNT and ANT is vital from a moral and legal perspective. Until the last few months, everyone has assumed that nuclear transfer which was successful in generating pluripotent stem cells must first have created a human embryo. The entity which ANT could create would produce pluripotent stem cells from a laboratory-constructed cellular source lacking the developmental potential of a human embryo. In layman's terms, the entity which ANT would create could only develop for a few days and would then ''close down.'' ANT thus transcends the moral dilemma which has heretofore prevented any legislation from passing. It renders moot the question of whether human life begins at creation or implantation of an embryo since the entity that ANT could create would not have at its inception the organizational and developmental capability to be considered a human life.

Further exploration of the ANT proposal already has the support of a long list of scientists and ethicists and religious leaders, including the former chairman of the U.S. Conference of Catholic Bishops Committee on Doctrine. The author and most vocal champion of ANT is Dr. William Hurlbut of Stanford. Dr. Hurlbut assured me months ago that ANT was technologically feasible and would soon be validated through animal models. And, indeed, just 4 months ago stem cell biologists, Alexander Meissner and Rudolf Jaenisch, of the Whitehead Institute at MIT, used altered nuclear transfer to produce fully functional pluripotent stem cells from a laboratory-construct that is dramatically different in developmental potential than a natural embryo. In testimony to an October 2005 Senate hearing on stem cells, Dr. Jaenisch explained that this procedure is simple and straightforward and does not involve the creation of an embryo. Dr. Jaenisch said, ''Because the ANT product lacks essential properties of the fertilized embryo, it is not justified to call it an ''embryo.'' That was October 19, 2005 testimony at an Appropriations Subcommittee on Labor, Health and Human Services, Education hearing on ''An Alternative Method for Obtaining Embryonic Stem Cells.'' This scientific advance was widely reported precisely because it signals the end of the ethical dilemma in this area of research; it suggests that science may soon be able to get this special kind of stem cell—pluripotent stem cells that genetically match the donor/patient—without cloning, creating, or destroying a human embryo.

Mr. President, I appreciate the patience of the Senate in bearing with me as I wound my way through the scientific thicket. I believe it was necessary to lay this foundation before proceeding, and I suspect that the Senate may already see the practical suggestion which I see as the logical result given the latest technological developments and the current stalemate.

Again, to reaffirm my central point, many scientists have resisted a total ban on human cloning because they believed it was necessary to clone human embryos for a narrow purpose: to get pluripotent stem cells which are a genetic match of the person whom they hope to treat medically. However, it now appears that it will be possible to get such stem cells without cloning an embryo.

Some may argue that these alternative forms of nuclear transfer and other new technologies are unproven and may never produce usable new discoveries. But the same thing can be said of embryonic stem cell research in general and SCNT in particular. Bear in mind that science has yet to succeed in getting pluripotent stem cells from SCNT at all. Nor, for that matter, is there a single new cure from embryonic stem cells derived from any source. If researchers cannot learn how to isolate and control genetic signals, then pluripotent stem cell research will turn out to have little medical application; if such control does prove possible, then there should soon be no reason to have to get the stem cells by a method that clones or destroys a human embryo.

As I mentioned earlier, we appear to be at a legislative stalemate. The key to reaching the proper legislative solution, I believe, is to recognize that the new scientific developments create possibilities for an honorable reconciliation that simply did not exist at the time Senators developed and sponsored the various cloning bills that are currently introduced in the Congress. In effect, the new technology is rendering the approach of those pieces of legislation out of date.

For example, the main anti-cloning bill, S. 658, of which I am a cosponsor, would ban the use of nuclear transfer whenever it resulted in the creation of a human embryo or an organism that was ''virtually identical'' to a human embryo. This standard satisfies one of the important principles of the pro-life community, because it recognizes that the dignity of pre-born human beings doesn't depend on their gestational age. But it fails to account for the possibility, created by altered nuclear transfer and some of the other alternative methods, that an entity may be ''virtually identical'' to an embryo in the sense that it has a similar external appearance—and can seem to be developing as it divides—without ever possessing the inherent organizational capability to be rightly considered a human being.

Because of this, there is a danger that the language of S. 658, which was adequate when we all assumed that any entity capable of creating embryonic stem cells must be a human embryo, would outlaw or imperil precisely those alternatives which hold the greatest promise of allowing stem cell research while protecting the integrity of human life. I discussed this problem with Doctor Hurlbut and, in a recent letter, he expressed concern that S. 658 as drafted might be misinterpreted to

outlaw ANT. He pointed out that the term 'virtually identical' is vague and unscientific and, therefore, could be open to misinterpretation either more broadly or more narrowly than intended by the proponents of this legislation.

The existence of alternatives like ANT actually strengthens the case of those of us who oppose the cloning of human embryos, since it promises another, ethically untroubling way of getting the same genetically matched stem cells scientists need. But it also shows that there is much about nuclear transfer that we have yet to discover, and it cautions against enacting criminal sanctions, like S. 658, that could have unintended consequences because they presume a scientific equilibrium that simply doesn't exist. Congress should still move effectively to prohibit human cloning but the approach of S. 658 needs to change. At minimum, the ''virtually identical'' language in S. 658 should be discarded, and the bill should specifically define when a cloned entity has the organizational capability and developmental potential to be considered a human being. But, I would prefer to enact a regulatory ban that could be adjusted over time to reflect changes in the science like ANT, perhaps after consultation with the President's Council on Bioethics, and I would couple that ban with aggressive funding of ANT and other alternatives, perhaps in the form of the competitive incentive program I will discuss in a moment.

The other main cloning legislation, S. 876, should, in light of recent developments, be equally unsatisfactory to many of its supporters, although for different reasons. S. 876 does not regulate the initial nuclear transfer process at all but simply bans implanting a cloned embryo. This is good as far as it goes, but S. 876 would provide no protection whatsoever to human life before implantation. Under generally accepted medical protocols today, science can't even experiment on animals if other methods of doing the same research are available, yet S. 876 would permit the cloning of human embryos for any purpose and under any circumstances, regardless even of whether the researchers need or intend to use the embryos for stem cell research.

The proponents of S. 876 were almost forced into this position to protect the stem cell research they thought necessary, because they believed, as we all did, that the only way to get genetically matched stem cells was through cloning and that any such cloning would necessarily produce a human embryo. But the evidence now suggests that this is not true. I am sure that the supporters of S. 876 are sincere in their belief that a human embryo does not acquire full personhood until some point after it is created. But I respectfully suggest that this view is no longer a reason, given the changing science, to continue supporting a legal standard that affords no dignity whatsoever to human life at its earliest stages.

The answer is for both sides to take advantage of scientific changes to find proposals which they can mutually support and which offer advantages to each compared to the current stalemate.

To that end, I propose a competition, to be managed by the National Institutes of Health, which would create incentives for our great research institutions to get the genetically matched stem cells we need without risking cloning an embryo. Simply put, the NIH would take applications from research institutions with research plans to accomplish the goal. The exact funding and practical details of this would have to be carefully worked out, but let me put forward a preliminary proposal. Five institutions would be selected for the competition and provided $10 million each to conduct their comprehensive plan. The first institution to successfully harvest genetically matched stem cells without cloning a human embryo would receive a prize of $20 million. NIH would develop the boundaries of the competition with the restriction being that the research could not violate the terms of the Dickey Amendment. Once ANT or one of the other alternative methods was successful and we had a proven means to get genetically matched stem cells without cloning a human being, the NIH could issue regulations requiring science to use that technology in its research.

The idea of a competition is not new. They have successfully been used for centuries to educate, inspire, and motivate. For example, Charles Lindberg won a $25,000 prize for the first nonstop flight between Paris and New York in 1927. In 2004, a company called Scaled Composites won a $10 million prize for the first privately funded manned suborbital flight from the St. Louis-based X Prize Foundation. Inspired by the success of the X prize—and with the support of Congress, the President and his Commission on Implementation of U.S. Exploration Policy—NASA has begun a federally funded program called Centennial Challenges that awards prizes to stimulate innovation in technical areas of interest to space exploration. In fact, the program manager at NASA, Brant Sponberg, said they expect to spend $80 million on prizes over the next 5 years.

A proposal of this kind moves us forward in a way both sides should be able to support. After all, the sole argument for SCNT is that we need it to get certain kinds of stem cells; the argument against it is that it involves the cloning of human embryos. If we can get the stem cells without the cloning, we render the current controversy scientifically obsolete. Science would have the stem cells it needs in a morally acceptable way that would allow for full Federal funding of stem cell research. The pro-life community would have an effective ban on human cloning. We would turn a zero sum game into a win-win proposition for everyone.

We are entering a promising new era in biomedical technology, but as our power over human life increases, so does the seriousness of the moral issues. It is important to acknowledge that both sides in this difficult debate are defending something important to all of us. We should all want to advance biomedical science while sustaining fundamental principles for the protection of human life.

Biomedical science should be a matter of unity in our national identity: no one should enter the hospital resentful that positive possibilities for the best therapies were not explored, or with moral qualms about the research on which their therapies have been developed.

The revelation that the South Koreans have not succeeded in obtaining pluripotent stem cells from cloned human embryo returns this research to square one. This presents to our Nation both a challenge and an opportunity: a social challenge to seek a way forward as a unified society, and an opportunity to set a solid scientific and moral foundation for future generations. The differences within our nation can be a source of strength as we seek to open a way forward for biomedical science. Altered nuclear transfer, and the other alternative approaches put forward by the President's Council on Bioethics offer us just such a path to progress.

We are at a difficult impasse, but we have extraordinary possibilities. Our current conflict reflects deep differences in our personal perspectives, but our wider goals are similar. Any purely political victory will leave our Nation bitterly divided and erode the social support that is essential for continuing public funding of biomedical science. It is with this recognition that I have put forward this proposal in a spirit of unity. And beneath this spirit of unity must be a spirit of humility: these are difficult issues and no one of us has the clarity of understanding or depth of knowledge to answer them alone. But with mutual good will we can transcend the current paralysis and find grounds for practical progress in scientific research. In his presentation on stem cell research last July to the Senate Appropriations Committee, Dr. Hurlbut said the goal should be to find ''islands of unity in a sea of controversy.'' We can move from one such island to another and end up in a world of progress and decency. There is no reason to continue glaring at each other across the legislative barricades, when the means are at hand to embrace the future of developmental biology without moral qualms or political division?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 30 minutes.

Mr. KENNEDY. Mr. President, will the Chair remind me when I have 5 minutes remaining.

The PRESIDING OFFICER. The Chair will so advise the Senator.

ASBESTOS

Mr. KENNEDY. Mr. President, the asbestos legislation which is before the Senate is both unfair and unworkable. It is unfair because many seriously ill victims of asbestos are completely excluded from compensation under the trust fund, and it is unworkable because the bill does not have adequate funding to ensure that all the victims who are eligible for compensation under the trust fund will actually receive what the legislation promises them.

These are fundamental flaws that cannot be corrected by a few last-minute amendments. They go to the heart of the bill. This bill will end up hurting the seriously ill victims of asbestos disease whom we are trying to help.

S. 852 fails the test of fairness for many of those most in need of assistance. Now is the time to take a serious look at how the proposed trust fund would operate—now, before it is too late.

Who would be excluded from receiving compensation even though they are seriously ill from asbestos exposure? Who would be left in legal limbo, ineligible for the trust fund and unable to pursue their claims in court?

I have said many times that the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. We cannot allow the tragedy of these workers and their families' enduring to become lost in a complex debate about the economic impact of asbestos litigation. The litigation did not create these costs. Exposure to asbestos created them. They are the cost of medical care, the cost of lost wages, incapacitated workers, the cost of providing for the families of workers who died years before their time. Those costs are real.

No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Unfortunately, S. 852 would shift more of the financial burden onto the backs of injured workers. That is unacceptable.

Let's look at what this legislation would really do to victims. It would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into legal limbo for up to 2 years. Their need for compensation to cover medical expenses, basic family necessities, will remain, but they have nowhere to turn for relief.

Under this legislation, even the exigent health claims currently pending in the courts, will be automatically stayed for 9 months as of the date of enactment. These cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written too broadly. It would stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of dying witnesses cannot be taken to preserve their testimony. The stay would deprive victims of their last chance at justice. I cannot believe the authors of the bill intended such a harsh result, but that is what the legislation does.

I strongly believe, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund becomes operational. Their ability to recover compensation in the court should not be halted until the trust fund is open for business and they are able to receive compensation from the fund. It is grossly unfair to leave these dying victims in legal limbo. For them, the old adage is especially true: Justice delayed is justice denied.

We should not deprive them of their last chance, their only chance to receive some measure of justice before asbestos-induced diseases silence them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current state takes that last chance away from them. I intend to offer an amendment that allows these severely ill victims to have their day in court.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than 40,000 victims suffering with asbestos-related lung cancers. These victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny from the fund. They are losing their right to go to court. They are being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system too much money goes to people who are not really sick and too little goes to those who are seriously ill. Lung cancer victims who have had years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet they are, under this legislation—not the previous legislation but under this legislation—completely excluded. Any person who was exposed to asbestos for 15 or more years and now has lung cancer should be eligible for compensation from the trust fund. Their cases would be reviewed individually by a panel of physicians to determine whether asbestos was a substantial contributing factor to their lung cancer. These 40,000 victims of asbestos should not be arbitrarily excluded from receiving compensation.

They were included in the original legislation. It was agreed to by medical experts for both business and labor. That provision should be restored to the bill. I will be proposing an amendment to rectify this serious injustice.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women, and children who lived in the vicinity of asbestos-contaminated sites, such as mining operations and processing plants, can and do contract asbestos-induced diseases.

The reason this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who live near the many processing plants from my State of Massachusetts, in western Massachusetts, to California, that received the lethal ore from the Libby mine. The deadly dust from Libby, MT, was spread across America. W.R. Grace shipped almost 10,000 pounds of ore to processing facilities in the 1960s through the 1990s, including Easthampton, MA, in western Massachusetts, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of the unfairness caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund. These red spots on this map are in States all across the

country with similar problems. Yet every one of them is excluded.

Community asbestos contamination can result from many different sources. Medical experts, for example, say it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment, as well. They should not be arbitrarily excluded from compensation, as if somehow their suffering is somehow less worthy of recognition than the suffering of asbestos victims. Yet that is what S. 852 does.

There are many of those victims. I have talked with the extraordinarily brave and courageous workers who came to the sites of the Trade Towers on September 11, working on those areas for days and weeks for an intense period of time, and their exposure to asbestos fibers during that work will pose an enormous health threat to them in the years to come. We all know there can be a significant period of latency. Are we going to exclude those extraordinary men and women who were out there trying to do an incredible job for the people, not just of New York but for our country? This legislation excludes them.

The asbestos trust fund is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. There is no principle more basic. Yet this bill violates that principle.

Our friend and colleague from Delaware intends to offer an amendment that if we run out of money, the provisions will be there for them to go back into the tort system. Just accept the Biden amendment. It makes it extremely clear and eliminates the roadblocks for going back into the tort system, as the current legislation does. As I understand it, there is not a willingness to accept the Biden amendment.

Another major flaw in this legislation is it lacks adequate funding. Putting it bluntly, S. 852 does not provide sufficient money to compensate the victims of asbestos diseases that it promises to cover. That is the essence of the budget debate we are having about the bill. The sponsors claim the budget point of order against the bill is technical, but the financial inadequacy of the trust fund to meet its obligation is very real. Should the trust fund fail, both asbestos victims and the taxpayers will pay a heavy price.

A broad range of experts have analyzed S. 852 and concluded that the asbestos trust fund created by this legislation is seriously underfunded. Senator CONRAD has addressed this in great detail. I certainly hope our colleagues will read his remarks carefully.

If S. 852 is enacted, the United States will be paying a commitment that hundreds of thousands of seriously ill asbestos victims will be compensated, but it will not have to ensure that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis and this Congress will bear the responsibility for it.

Since the trust fund will be borrowing from the U.S. Treasury in the first few years of operation, if it becomes insolvent it will have a direct impact on American taxpayers. Let me point out, we do not do very well in setting up these trust funds to compensate individuals. We certainly have not done it with regard to the downwinders in other trust funds. There is little reason to believe we are going to do it or would do it in this circumstance, either.

The argument that there are serious inadequacies in the way asbestos cases are abjudicated today does not mean that any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation that fails to provide a guarantee of adequate funding to make sure these injured workers covered by the trust fund will actually receive what the bill promises them. This bill will do harm to these asbestos victims. I intend to vote no.

There is no reason, if we reject this legislation, we cannot come back with legislation that builds on a trust fund that is adequate and will do the job. That is what many Members believe is the way we ought to go. This is not such a bill.

THE BUDGET

Mr. KENNEDY. Mr. President, I will talk for a few moments about the budget that has been submitted by this administration in the last few days and how it fails to address those needs.

Effectively, in the budget the President has set up, we are going to see a very serious and significant decline in supporting some enormously needed programs that help to provide opportunities for so many of our people in this country, such as educational programs and health programs, all in order that we provide a tax break for individual Americans at the cost of $45 billion or $46 billion this year.

That is what a budget is about: priorities. When I go back to Massachusetts, one of the first orders of business people are talking to me about is: What in the world did the Congress ever do in passing that prescription drug program?

I take pride in the fact we passed in the Senate a very good prescription drug program with Senator BOB GRAHAM from Florida. We received over 70 votes in the Senate. We built that program using the Medicare system, which is tried, tested, and depended upon by millions of Americans.

Medicare was defeated in 1964 and accepted in 1965 in the Senate. Right after that, we accepted the Medicaid Program to look after the neediest people in our society—primarily children, women, and disabled individuals—to take care of the poorest of the poor.

Those programs were implemented in 11 months—11 months. It has been over a year for this program to be implemented. And they did not have a computer in 1965 to implement it, but it worked on the principle of building the Medicare system similar to Social Security. American people had confidence in it, and it worked.

Well, we went to conference with the House of Representatives, and that is when the influence of the insurance industry and the drug industry came to play. They basically hijacked what was going to be a Medicare prescription drug program for our senior citizens, in a way, and drafted that program to serve not the senior citizens—not the senior citizens—but to serve the special interests.

I opposed that on the floor of the Senate. Our Republican friends forced that on through. And now it is chaos in my State of Massachusetts with that prescription drug program. Why, at least, didn't our Republican friends say: All right, let's have some real competition; let's put the private sector and Medicare—let them compete and let our senior citizens make the choice.

Do you think they would do that? No. They would not bring a program back here that was built on the Medicare system. They would not permit the seniors in my State to be able to make a choice. But they will say: We trust Medicare. It provides for our doctors' bills. It provides for our hospitalization.

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. KENNEDY. In 1964 and 1965, when you passed that, you did not include prescription drugs because 97 percent of the private sector did not include prescription drugs. Why didn't we do the prescription drug program just like we did the Medicare Program? Simple, workable, understandable—finished.

No, no, we can't do that. We have to do it a different way. We are going to have—instead of the Medicare system, which is tried and tested and people understand—we are going to give the seniors in Massachusetts 45 different programs with different copays, different formularies, different deductibles.

There is mass confusion with that program. Not only is there mass confusion, but you have the extraordinary circumstance that when a senior says: OK. I like this formulary. I can afford this deductible. I can afford this copay. I think I will go into this because of the cost of prescription drugs—and they sign on to it. There is an enormously interesting fact; that is, the company they sign up with can change their formulary, can change the deductible and copay. Do you think the

senior can get out of that program without paying a penalty? Of course, they cannot. What kind of business is it? They feel, if the private sector can do it so well, why don't we have the competition?

Why did we have to provide a 9-percent inflater cost for all the HMOs, when people who are in the HMOs are 18 percent healthier than they are in Medicare? Add that together, my friends, and it is 25 percent more if you are in the HMO than if you are in the Medicare system. Why? Well, if that is the private sector, why isn't the private sector able to compete? Because this amounts to about a $40 billion subsidy. Do you hear me? A $40 billion subsidy, just like it is about a $170 billion subsidy for the drug industry.

People wonder why the copayments are higher. Would people wonder why the doughnut is there? There it is, my friends. And with all the reforms we hear talked about, do you think we are going to get a chance to support a change in that program by adding a—build it on Medicare. Let's do that. Let's add that. Have a real even competition and see what happens out there.

But many of my colleagues feel that way. We are going to press to try to do it. The point I am making is, I care deeply about these asbestos victims. It is enormously important we get it right. This bill does not do it. But we are in this Congress, on a Friday, at 10 minutes of 11, with an empty Chamber. Why aren't we dealing with the challenges and the problems of the people back home?

I can tell you what they are concerned about. Why aren't we debating this Medicare today, this afternoon? Why are we so busy in what we are doing that we are not dealing with this issue? Why aren't we dealing with their home heating oil and the priorities? We have the President in his budget recommending, for this year, $500 million less for home heating oil than even last year, with record profits for the oil industry—unconscionable profits for the oil industry. Paid for by whom? Average Americans. Unconscionable.

Why doesn't this President today, on this Friday, bring in the heads of the oil companies all over the country and say: You have drunk at that trough long enough. There are people up in New England and the upper Midwest and around this country who cannot afford it—who are on a fixed income—with the explosions in the cost. Because of the war in Iraq, oil costs $60 a barrel. They did not have anything to do with it. The oil companies are reaping profits because we have turmoil in the Middle East. And we are doing virtually nothing about that this afternoon, except facing a budget that is going to make it even more difficult.

In my State, the average home owner uses three tankfuls a year—three tankfuls a year—of oil. And the neediest people in our State who qualify for this program are going to get, this year, about one tankful. And what is the prospect for next year with the home heating oil price that we have today? They are not even going to get a full tank for the next year, unless we are—well, Mr. President, I am going to seek recognition in my own right at the present time. My time has expired?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. Mr. President, I ask for recognition.

The PRESIDING OFFICER. The Senator is recognized in morning business for up to 10 minutes.

Mr. KENNEDY. Mr. President, we are talking about priorities. We are giving examples of what has been happening in terms of the cost of LIHEAP and the fuel assistance programs. Shown on this chart are all the costs going right up through the roof. We have the challenges we have been facing out in the Middle East. Education.

Why are people so concerned about a culture of corruption that has taken over in Washington? Why are they so concerned about lobbyists? Why are they so concerned about special interests? We have that debate. We are going to try to get action on this, which I will certainly support.

What we have not talked about is what those lobbyists have been doing, what the impact has been on various programs that affect working families in the middle class. I will give you one of them. Higher education. The bill that came out of the Senate had $8 billion in student assistance. The bill that came out of the House had $3.8 billion in student assistance and provided $12 billion in tax breaks for the wealthy people of this country. I call that a tax on middle class people, my friends, in order to give a tax break to the wealthiest individuals.

Do you understand what I am saying? The lobbyists were able to make the student loan program work for the banks and the wealthy in this country at the expense of the middle-income families who are paying those debts now for their children to go on to education.

In my State, 67 percent of the children who go to those schools and colleges in my State get student aid and assistance. That does not include what they earn at summer jobs and what their parents contribute. They need these programs. We have seen an explosion in student loans over the period of the last 5 or 7 years. Who has been working and who has been profiting? It has been the banks—the banks.

Do you think this Senate would stand for a competition for who would provide the lowest rates for students so we could take the total student loan program and put it out for bid—for bid—similar to competition, free enterprise? Absolutely not. Absolutely not. There is that cozy relationship that exists now with Sally Mae and the loan industries that pay their executives hundreds of thousands of dollars, contribute millions and millions of dollars. And they are getting it their way.

The American people ought to understand that the lobbying has direct results. President Bush, in his last campaign and his campaign previously, said: We are going to get the Pell grants up to $4,500—$4,500. Do you think it is in that budget? Do you think it is even in his budget requesting $4,500? No. I have read the space. Do you think that is in there? No. That is not even in there.

So if you are talking about what is bothering people, pick up today's newspapers. Here it is: ''Mining fines among smallest.'' Laws limit size and allow reduction. This is the difference between the mines' penalties and the fines that are paid for other consumer product safety violations of the FCC, SEC, EPA, even OSHA. The bottom is on mine safety. That might not have saved all the lives. That might not have even saved half of the lives of those miners who have been lost, but why aren't we debating what is on the minds of the people in West Virginia, Pennsylvania, and other States today? Why aren't we dealing with their business?

Here we have on the front page of another newspaper: ''White House knew of Levee's Failure on Night of Storm.'' This is all about Katrina and what has been going on. Sure, we have had some hearings, but why aren't we talking about some of this that is on the minds of the people? Certainly, it is on the minds of the people of Louisiana, Mississippi, and Alabama. Why aren't we talking about that this afternoon? Why aren't we doing some of that business? And then, if you look in the Washington Post: ''Ex-CIA Official Faults Use of Data on Iraq.''

> The former CIA official who coordinated U.S. intelligence on the Middle East until last year has accused the Bush administration of ''cherry-picking'' intelligence. . . .

And this goes all the way through, basically saying:

> ''Our official intelligence on Iraqi weapons programs was flawed, but even with its flaws, it was not what led to the war,'' . . . Instead, he asserted, the administration ''went to war without requesting—and evidently without being influenced by—any strategic level intelligence assessments on any aspect of Iraq.

People want to know. American sons and daughters are dying over there. Why aren't we talking about this?

My point is, this budget the President has put forward is not what the American people expect. It is not what they deserve, not what they are entitled to. Many of us are going to work every possible way. It is the allocation of resources. Money does not solve everything, but it is an indication of a nation's priorities—a nation's priorities as to lower heating oil costs, a nation's priorities in terms of lower drug costs, a nation's priorities in terms of education costs, a nation's priorities in having an increase in the minimum wage.

These are the things that are of concern to people. I would hope we would

get back to the Nation's business and get back to it soon. Americans are entitled to it, and we have waited too long to be able to do it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GRAMMY WINNER BARACK OBAMA

Mr. DURBIN. Mr. President, my colleague in the Senate, Senator BARACK OBAMA of Illinois, is carrying on a grand Illinois tradition. In the history of the United States of America, only two U.S. Senators have ever won a Grammy award. The first was Senator Everett McKinley Dirksen from Pekin, IL for his album ''Gallant Men,'' which many of us can still recall, his deep baritone voice intoning those great patriotic verses that inspired so many.

Now another Senator from Illinois became the second Senator in history to win a Grammy award in the best spoken word category at Wednesday's Grammy Awards ceremony. Senator OBAMA won his Grammy for recording his autobiographical book ''Dreams for My Father.'' The book was first published in 1995. It is an inspirational book, telling the story of not only BARACK's life but also of his quest to understand his heritage, returning to Kenya to the tribe where his father was raised, to meet the people, to learn the stories about his origins and his family's roots. It is a wonderful book. It has become a best seller. I was given a copy by BARACK long before he announced his candidacy to the Senate and value it as a great story about a great American with whom I am honored to serve.

There was stiff competition in that category for the spoken word. BARACK OBAMA prevailed. But others in the finals included Garrison Keillor, Al Franken, Sean Penn, and George Carlin. Who came out on top? The junior Senator from Illinois, BARACK OBAMA.

I understand that Senator HILLARY CLINTON won a Grammy when she was First Lady. Now, of course, she is a distinguished Senator from New York. But she won one for recording ''It Takes a Village.'' Her husband, former President Bill Clinton, won a Grammy for the reading of his autobiography ''My Life.''

So far it is a clean sweep for Illinois Senators at the Grammies. With this distinguished record, many people will want to continue to follow the career of my junior colleague, Senator BARACK OBAMA.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, I rise to speak to an issue important to every American, certainly important to more than 40 million who are on Social Security. Buried deep in the President's 2,349-page budget are three proposals relating to Social Security. Some of them come as a surprise.

First, President Bush recommends spending more than $700 billion to create Social Security private accounts. If we thought this was an issue that had gone away, obviously the White House does not want to abandon it. They are talking about $700 billion to push for Social Security privatization. Second, the President wants to reduce benefits to future Social Security beneficiaries. And third, he calls for eliminating the $255 death benefit awarded to families of people who passed away.

The American people have made it clear to the President they are not interested in this privatization scheme. The more the President traveled across America, the more he spoke about it, fewer people supported it. It is an indication that people have genuine concerns about it and for good reason. First, they know this privatization scheme is going to make Social Security's long-term funding problems worse, not better. Second, the President's proposal will force deep cuts in guaranteed Social Security benefits for future retirees, even if they don't choose a private account. Third, partially privatizing Social Security adds trillions of dollars to our national debt by taking money out of the Social Security trust fund. And that debt, under President Bush, has reached historic levels. Finally, partially privatizing Social Security would tie America's retirement security to the uncertainty of financial markets. As there are winners and losers in the stock market every day, there would be winners and losers among retirees in America. Those who guess wrong in their investments could easily end up in a predicament where they don't have the resources they need for a safe and comfortable retirement.

The President says he is for the ownership society. We know what that means. It means we are all in this alone. We know better. When we stand together as an American family with our seniors and our most vulnerable Americans, we are stronger, stronger because we are appealing to the values that make this Nation great. Social Security privatization is not consistent with those values.

Allowing people to divert 4 percent of their Social Security taxes into private accounts sounds harmless, but it is a pay-as-you-go system. Money that is diverted is money that isn't there to pay benefits. By the President's estimation, his plan will create a $700 billion hole in the Social Security trust fund. That is what it says in the President's budget. Who is going to make up the difference? Unfortunately, some will suggest the way to make up the difference is to borrow it. Who will lend us the money? We know who our creditors are: Japan, China, Saudi Arabia, the OPEC nations. Many countries around the world will loan us money now, but then, of course, they are our creditors. They are our mortgageholders. We are beholden to them, creating an even greater debt for future generation, and greater vulnerability.

The benefit cuts the President has called for as well are not going to fly. He calls these benefit cuts progressive price indexing. It sounds good, cutting benefits for lower income workers less than for higher income workers, but the practical impact of the President's budget on Social Security benefits would mean that a worker 25 years old today, who retires at age 65 with career earnings equivalent to $59,000 annually, would see a 24-percent benefit cut by the President's proposal. A similar worker, born 5 years from now, retiring at age 65, average career earnings of $36,000, would face a 28-percent benefit cut. As people see their pension plans crumbling because of corporate mergers, bankruptcies, and sleight of hand, the President is calling for cutting basic Social Security benefits to people who are certainly not wealthy, if their average income is $36,000 a year. These workers would be better off if the President didn't touch Social Security.

A worker born 5 years from now who retires at age 65 and has career earnings that average $59,000 would suffer a 42-percent benefit cut.

This goes too far. I hope the Congress will not seriously consider these proposals by the President when it comes to Social Security.

It is interesting that this President is calling for cuts in Social Security at the same time he wants to cut the taxes paid by the wealthiest people in America. The cost of the President's tax cuts in 2001 and 2003, if made permanent, will be $11.1 trillion over the next 75 years. It is the height of irresponsibility to give tax cuts to the most comfortable and wealthiest people in America and to cut the basic social safety net on which we count.

Finally, the President's budget proposes to cut the $255 death benefit awarded to widows, widowers, and children left behind by the death of a member of their family who was covered by Social Security. The President would cut the $255 death payment to widows and surviving children to pay for funeral expenses and then turn around and give a tax cut to people making over $1 million a year. How can he possibly resolve the injustice that is part of that proposal?

If we are supposed to be a caring and compassionate people—and we are—wouldn't we care more for a widow who would get a check for $255 to pay for funeral expenses than someone making $1 million a year who would receive a $35,000 tax cut under the President's proposal? That is why the President's priorities are upside down.

As Members start looking through this budget more closely, as we have, they are going to be startled by the

fact that the President still clings tenaciously to the unpopular privatization of Social Security. They will be worried over the idea of cutting Social Security benefits when pension plans are disappearing and cutting back their payout. They will be absolutely dumbfounded when they read that this President wants to cut that $255 check for the widow to cover funeral expenses in order for us to give tax cuts to wealthy people.

The President said it is time for us to put aside partisan politics when it comes to Social Security and work together to get this problem solved. That is what he said in the State of the Union.

He proposed we create a commission. I support it. We have said that for a long time. Those of us who were fortunate enough to be here the last time a meaningful, bipartisan, balanced commission was created know that back in 1983 we got the job done. President Reagan had the right idea. Tip O'Neill, the Democratic leader in the House of Representatives, joined with him on a bipartisan basis and we ended up buying almost 50 years of solvency by following those commission recommendations. The same thing is true now.

The President has to walk away from privatization, walk away from deep cuts in benefits for people who are not wealthy in retirement. He certainly should not walk away from the widows and widowers across America who count on this $255 check to meet some of the expenses of people who have passed away in their families. I urge my colleagues to look carefully at this budget when it comes to Social Security.

I close by saying when we return next week, we will take up another bill on reconciliation. It is an important bill about taxes and spending. It is going to reflect the President's priorities for tax cuts for the wealthiest in America and little or no help for the working families in America. These are the families struggling to pay for their kids' college education, trying to make mortgage payments, pay those property taxes, and trying to make certain they are paying the heating bills that have doubled this year. Why would we not give them a helping hand?

Unfortunately, the President's proposal puts the help in those homes that, frankly, are not worried too much about heating bills. They don't have to count pennies every month. We will face that again, and then we will return to the asbestos bill, which we have talked about all week. The first thing we will consider is a budget point of order that was raised by Senator JOHN ENSIGN from Nevada. It goes to the heart of this asbestos trust fund, and that is whether we are dealing with honest figures and whether we can say with confidence that this trust fund, which will close down the courthouses in America for asbestos victims, can truly be solvent for years to come and pay out to those victims and their families what they truly deserve.

Many of us questioned that. We asked the sponsor of the bill to justify the $140 billion and tell us how he came up with that figure. Unfortunately, he cannot. We have asked him to give us the secret list that has the names of all of the businesses that are supposed to pay into this trust fund. Still no list is produced. Imagine that, a secret list of businesses in the possession of the Committee on the Judiciary that will not be shared with all of the Members of the Senate or, more importantly, with the American public. So we are supposed to have confidence in an approach that is veiled in secrecy and cannot be explained? That is why Senator ENSIGN's point of order is so important.

Even if you believe, as I do, that the asbestos system can be improved and that survivors should receive more compensation, in a more efficient way, we have to understand that this approach will not work. It will fail and its failure will be at the great expense of a lot of vulnerable Americans.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REED. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

Mr. REED. Mr. President, I would like to begin my remarks today speaking about a topic that I have been involved with, along with many of my colleagues for months now. That is LIHEAP funding.

If you look at a weather map, you will see that temperatures across much of the United States are only expected to be in the thirties and forties today. Winter has finally arrived. In Providence, the high is only projected to be 19 degrees. A nor'easter is on its way up the east coast; they forecast snow that will hit here in the DC area tomorrow, all the way up to New England, and so winter has arrived.

I wanted to mention the weather forecast because we are at the end of the second week of February, and there is no new funding for the Low-Income Home Energy Assistance Program, and as far as I know, there are no plans by the majority to bring to the Senate a vote on a $2 billion LIHEAP funding proposal. This funding proposal was removed from the Department of Defense Appropriations bill conference report. It was one of a few items that was stripped out, there were many other nondefense items that were included in the Defense Appropriations conference report in December, but for some reason this was dropped. I think a reason it is adversely affecting thousands and thousands of Americans across the country, ranging from the Northeast into the mid-Atlantic, across the Midwest, out into the far West. People are struggling with rising energy prices, and today, falling temperatures.

On Monday, a bipartisan letter signed by 34 Governors urged Congress to pass $2 billion in immediate additional LIHEAP assistance. These are Governors from across the country, Governors that are of both party affiliations, Governors who are trying to respond to these conditions of both weather and extraordinary price increases.

The letter states:

LIHEAP applications are projected to increase by as much as 25 percent in some States . . . If Congress does not increase LIHEAP funding in the next few weeks, state programs across the country could run dry and the number of households unable to meet their basic heating needs could skyrocket.

I ask unanimous consent that both of these letters be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEBRUARY 6, 2006.

Hon. BILL FRIST,
Majority Leader, U.S. Senate.
Hon. HARRY REID,
Minority Leader, U.S. Senate.
Hon. J. DENNIS HASTERT,
Speaker, House of Representatives.
Hon. NANCY PELOSI,
Minority Leader, House of Representatives.

DEAR SENATOR FRIST, SENATOR REID, SPEAKER HASTERT, AND REPRESENTATIVE PELOSI: For several months this winter, states have taken steps to help assure that our most vulnerable residents are not overwhelmed by the sharp rise in home heating costs. This has often meant significant state contributions to emergency relief funds or supplementing existing state-federal programs. Despite these actions by the states and the record cost of energy nationwide, federal funding for the Low Income Home Energy Assistance Program (LIHEAP) reflects a net decrease from the previous fiscal year's total. We urge Congress to join the, states in meeting the well-documented need for additional home heating assistance by passing $2 billion in immediate additional LIHEAP assistance.

Governors supported the progress that was made when LIHEAP was authorized at $5.1 billion in the Energy Policy Act of 2005, but were disappointed when Congress appropriated only $2.16 billion for FY 2006. While we appreciate the President's recent release of an additional $100 million of emergency LIHEAP funds and Congress' proposal to add $1 billion for FY 2007, urgent action is needed to address the Energy Information Administration (EIA)'s prediction of a 30 to 70 percent rise in consumer energy costs this winter.

Covering dramatic increases in natural gas and heating oil prices presents a potential hardship for our citizens. LIHEAP applications are projected to increase by as much as 25% in some states. As noted above, many states, energy industry leaders, and private citizens have done their part by increasing investments in the program. We are asking

you to join us by sending legislation to the President that provides enough funding to meet our low-income citizens' energy needs for 2006. If Congress: does not increase LIHEAP funding in the next few weeks, state programs across the country could run dry, and the number of households unable to meet their basic heating needs could skyrocket.

Our states are in the process of documenting the potential shortfalls in LIHEAP funding and the supplemental funding states have already provided. We look forward to sharing that information with you shortly. Thank you for your consideration of this request and your continued commitment to assisting our neediest families. We hope that you will take this opportunity to actively support the LIHEAP program.

Sincerely,

Governor Frank H. Murkowski, Alaska; Governor Janet Napolitano, Arizona; Governor M. Jodi Rell, Connecticut; Governor Ruth Ann Minner, Delaware; Governor Rod Blagojevich, Illinois; Governor Mitch Daniels, Indiana; Governor Thomas J. Vilsack, Iowa; Governor Kathleen Sebelius, Kansas; Governor Kathleen B. Blanco, Louisiana; Governor John Baldacci, Maine; Governor Robert L. Ehrlich Jr., Maryland; Governor Mitt Romney, Massachusetts, Governor Jennifer M. Granholm, Michigan; Governor Tim Pawlenty, Minnesota; Governor Brian Schweitzer, Montana; Governor Dave Heineman, Nebraska; Governor John Lynch, New Hampshire, Governor Jon S. Corzine, New Jersey; Governor Bill Richardson, New Mexico; Governor George E. Pataki, New York.

Governor Michael F. Easley, North Carolina; Governor John Hoeven, North Dakota; Governor Bob Taft, Ohio; Governor Brad Henry, Oklahoma; Governor Ted Kulongoski, Oregon; Governor Edward G. Rendell, Pennsylvania; Governor Donald L. Carcieri, Rhode Island; Governor Jon Huntsman, Jr., Utah; Governor James Douglas, Vermont; Governor Timothy M. Kaine, Virginia; Governor Christine O. Gregoire, Washington; Governor Joe Manchin III, West Virginia; Governor Jim Doyle, Wisconsin; Governor Dave Freudenthal, Wyoming.

U.S. SENATE,
Washington, DC, January 25, 2006.

Hon. WILLIAM H. FRIST,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST: High energy prices are threatening the health and economic well-being of low-income households across the United States. No family in our nation should be forced to choose between heating their home and putting food on the table for their children. No senior citizen should have to decide between buying life saving prescriptions or paying utility bills. Unfortunately, these stark choices are a reality for too many Americans across the nation. We strongly urge you to take immediate action to help low-income Americans by bringing a measure to the floor that provides an additional $2.92 billion for the Low-Income Home Energy Assistance Program (LIHEAP), as supported by the majority of the Senate.

Since October 5, 2005, the Senate has voted six times to increase LIHEAP funding to $5.1 billion. Bipartisan amendments offered to the Department of Defense Appropriations bill, the Transportation, Treasury and HUD Appropriations bill, the Labor, Health and Human Services and Education Appropriations bill, and the Tax Reconciliation bill received a majority of the Senate's support. Unfortunately, these amendments were not given the opportunity for a straight up-or-down vote. In December, 63 Senators supported a successful motion to instruct, which directed the Budget Reconciliation Conference Committee to provide $2.92 billion in additional funding for LIHEAP in FY 2006. Yet, the conference report for the Budget Reconciliation bill includes only $1 billion, with this spending designated for FY 2007. Procedural maneuvers are preventing vital assistance from reaching Americans. These families and seniors deserve help from the federal government.

As you know, the Department of Defense (DoD) Appropriations Conference report originally provided an additional $2 billion for LIHEAP. The LIHEAP funding provided by the DoD conferees was designated as emergency funding. The emergency designation funding is warranted given the high cost of energy this winter, and the lack of growth in workers' wages. Unfortunately, other more controversial matters included in the conference report prevented the retention of the LIHEAP money in final action on that bill.

The Energy Information Agency forecasts that households heating with natural gas will experience an average increase of 35 percent over last winter. Households heating with oil will see an increase of 23 percent, and households using propane can expect an increase of 17 percent. In addition, wages are not keeping pace with inflation. The Real Earnings report by the Bureau of Labor Statistics shows that the average hourly earnings of production and non-supervisory workers on private nonfarm payrolls were lower in December 2005 than they were a year ago, after accounting for inflation. Working families are continuing to lose ground, meaning more families also need LIHEAP assistance this year. Paychecks are being stretched thinner as families face higher prices for home heating, health care, and education.

We respectfully request that you bring a measure to the Senate floor at the end of this month, or at the latest, early February, that funds LIHEAP at the $5.1 billion level supported by the Senate. We also urge that these resources be allocated in such a way that they will benefit all states and ensure they receive this necessary assistance promptly. American families and seniors have been waiting too long for relief from high energy costs. Thank you for your consideration for this essential request.

Sincerely,

Jack Reed, Maria Cantwell, Byron L. Dorgan, Paul S. Sarbanes, Charles E. Schumer, Edward Kennedy, Tom Harkin, Jeff Bingaman, Barbara Boxer, Herb Kohl.

John F. Kerry, Barack Obama, Hillary Rodham Clinton, Daniel K. Akaka, Max Baucus, Barbara A. Mikulski, Patrick J. Leahy, Debbie Stabenow, Carl Levin, Mark Dayton, Joseph R. Biden, James M. Jeffords, Patty Murray, Dick Durbin, Robert Menendez.

Mr. REED. According to the National Energy Assistance Directors Association, the following States have exhausted their LIHEAP funding or will do so by the end of the month: Alabama, Arkansas, California, Georgia, Iowa, Maine, Oklahoma, Oregon, South Dakota, Rhode Island, Utah, New Hampshire, Washington, and Ohio. This is a broad-based problem, transcending all regions of the country and, again, a direct reflection of high energy prices and falling temperatures.

High energy prices are threatening the health and economic well-being of low-income families and seniors across the United States and we must provide additional LIHEAP funding this winter.

On Tuesday, the Energy Information Administration released its Short-Term Energy Outlook. The data was not encouraging. Despite our relatively mild winter, households heating primarily with natural gas can expect to spend 24 percent more on fuel this winter than last winter. If a household is heating with oil, it can expect to pay 16 percent more. Those households depending on propane can expect to pay 14 percent more this winter than last. And to quote the EIA, the Energy Information Administration:

> Should colder-than-normal weather occur for the remainder of the heating season, expenditures could be significantly higher than currently projected.

These are costs that are piling up on working families and at the same time they are seeing their wages stagnate, not keeping up with inflation and not keeping up, certainly, with energy costs. Working families are continuing to lose ground, meaning more families need LIHEAP assistance as a result. So the paychecks are being stretched thinner and thinner as families face higher prices for home heating, in addition to health care, in addition to education. So we have to do something, and I believe we should do something.

At least five times over the last several months, the Senate has, by majority vote, supported an increase in LIHEAP spending at least to the $2 billion mark. But, because of the procedural rules, budget objections, we could not prevail, even though we had a majority of Senators on both sides of the aisle. I think that sends a strong signal that not only can we act, we should act.

Now I will urge the majority leader to take immediate action to help these low-income Americans by bringing a measure to the floor that provides the full $2 billion in additional LIHEAP funding. And, I also ask the President, and the White House to stand on the side of American families to urge this to be done. They should release a public statement supporting additional LIHEAP funding.

Also, the White House can act immediately by releasing the remaining $100 million in LIHEAP contingency funds provided in the fiscal year 2006 Labor, HHS, and Education Appropriations bill. If you go back to the Governors of our States, who are close to this problem, if you look at the States that are exhausting their LIHEAP funds—and it is still only February—we could have 8 more weeks of rather cold temperatures. Indeed, if the weather evens out, we should have 8 more weeks of cold temperatures because it has been mild to this point. But these States of Alabama, Arkansas, California, Georgia, Iowa, Maine, Oklahoma, Oregon, South Dakota, Rhode Island, Utah, New Hampshire, Washington, and Ohio need this assistance and we should give it to them.

THE BUDGET

I will make more general comments about the budget. Part of it is, of course, the inability to respond to the heating crisis. I think there is a much greater set of issues confronting us with the budget the President sent up. I have deep concerns about the President's fiscal year 2007 budget. It neither meets the pressing needs of the American people nor addresses the long-term challenges that lie ahead. Clearly, we are in for another year of policies that do not help the average family or bring down the deficit. I suspect these are the two major criteria most Americans will judge this budget on: Will it assist families, working families, in the country to move forward? Will it begin to tackle some of the long-term problems we face?

It is tremendously disappointing that the President's budget has cut funding for programs that are important and vital to the well-being of children, education, economic success, and the safety of Americans. While the budget was appropriately invested in national security, it unfortunately leaves our citizens behind here at home in many different capacities. In addition, the President's budget seeks to make costly tax breaks for the wealthiest Americans permanent, at a time when we are facing one of the largest deficits in the history of the country.

The administration strains to show progress reducing the deficit, but in fact it exaggerates the deficit in the short run and understates it in the future by leaving out big-ticket items, such as war costs. We will shortly receive an approximately $100 billion supplemental for operations in Iraq and Afghanistan. It would be unfortunate not to support our troops in the field, but we have responsibilities of not only supporting troops in the field but doing it in a responsible way. And it is not by accumulating each year billions of dollars in supplemental appropriations; it is in trying to deal with these costs. Certainly it is including those costs in any projection of the way ahead with respect to the budget of the President.

The President also has not clearly indicated how we are going to attempt to fix the alternative minimum tax. This is a tax which is gradually encroaching on the middle class of America. It was originally designed to provide default for those wealthier Americans who could, through very shrewd but legal tax planning, avoid any significant tax liability. Now, because of the design of our tax system, it is reaching down into the middle class. It is a multibillion-dollar problem we have to address. Once again, that is not in the budget.

We know these large deficits will increasingly hamper our ability to sustain the economy in the long run. And no matter how rosy a picture the administration tries to paint, neither the President nor future fiscal outlooks look particularly bright given this current deficit situation.

This first chart shows what has happened over the last several years. When President Bush took office, the Congressional Budget Office projected large and growing Federal budget surpluses under existing laws and policies, the so-called baseline. We can see in the year 2000 there was a $236 billion surplus. That was projected to go to $281 billion, $313 billion, $359 billion, all the way to the year 2006 with a $505 billion surplus. That is the projection.

The reality is the surplus has been declining, until 2002 it reached a minus $158 billion, a deficit of $158 billion, and the numbers go down, go down in 2004 to $413 billion. There was a slight improvement, and one can argue about whether that is a one-time phenomenon based on some tax provisions we passed. The forecast of CBO for 2006 is $337 billion. That is a huge swing just at a time when we are approaching significant challenges with respect to the baby boom generation in Medicare, Social Security, and Medicaid.

This has been a huge reversal of fortunes. In 2000, CBO was predicting a $5.6 trillion 10-year surplus from 2002 to 2011. This has turned into a deficit of $2.7 trillion. That is, by my rough calculation, roughly an $8 billion swing from positive to minus. One can just see the difference in 2006: a $505 billion surplus to a $337 billion deficit. That is an $800 billion-plus swing between the projections and the reality, the result of the policies the President has adopted, the result of some costs which could not be avoided—certainly in response to 9/11—but many other costs which were capable of being, if not avoided, then properly funded. Certainly the tax cuts contribute significantly each step of the way as we go forward.

Instead of sound budget policies preparing for the immediate retirement of the baby boom generation, the Bush administration and the majority of Congress have refused to adopt the kind of budget enforcement rules which help achieve fiscal discipline in the 1990s.

Let me remind you that when I arrived in the Congress in 1990, taking office in the House in 1991, we were looking at continuous deficits many years preceding and projected to go forward. We adopted not only budget rules but budget policies. They were not supported by the Republicans. This was a Democratic initiative of President Clinton together with a Democratic Congress that actually reversed the situation. So this number, $236 billion, was the result of quite aggressive and quite responsible actions in the 1990s by Democrats and a Democratic President to move from deficits to surpluses to begin to store up what we thought would be surpluses so that we could deal realistically and fairly with the oncoming and expected issue of demographic change in the United States of an older population increasingly aging and requiring additional services. All of this was reversed through the policies of the Bush administration.

We have pursued a policy, as I mentioned before, of trying to stabilize and reconstruct Iraq by supplementals, not by including even a fraction or a significant fraction of the known cost in our underlying budget. Having taken at least seven trips to Iraq and four to Afghanistan, I can tell you it is a long-term process to do it right, to get it to a point where it is not worse off than it would have been without our intervention. That takes resources.

We have also had these tax cuts which continue to sap our strength.

If we look at the Bush tax cuts, they are nearly 90 times larger for millionaires than for middle-income households, hugely disproportionate, having adverse macroeconomic effects, having adverse fiscal effects in terms of the budget, and not helping the families who all of us will stand up here and pledge are at the top of our list to help: those low- and middle-income families who are struggling with increased costs. This is astronomical. Families are struggling with health care, retirement issues, loss of jobs, stable employment—one does not have to go across this country too far to see communities that have been traumatized by closing factories. Every time we listen to a news report, we are hearing another company, another major company, such as Ford and others, say they are closing factories. That impact is severe and traumatic to families. They are grappling with that and retirement funds which seem to be evaporating. People who worked their whole lives and thought they would have adequate retirement and health care from their employers are finding that is becoming almost a mirage, in some cases, and at the same time, there are usually disproportionate tax advantages through these tax cuts given to the wealthiest Americans.

The average amount of the 2001 to 2004 tax cuts for households of more than $1 million of income was $103,000 in 2005. The comparable figure for those households between $50,000 and $75,000 in household income is $1,200, most of which is probably eaten up before they receive it by increases in health costs, increases in energy costs, increases in the cost of simply trying to get by day to day. Middle and lower income families are paying a price for these tax cuts, and it is a price they are finding very difficult to bear each day going forward.

There are specific areas of concern in this budget which have to be mentioned. With respect to health care, the President, during his State of the Union Address, said that it is the Government's responsibility ''to provide health care for the poor and the elderly.'' But his budget proposal only serves to undermine the commitment of our Nation to care for those less fortunate.

The President spoke about access to care and proposed a modest increase in funding for community health centers. At the same time, however, his budget eliminates funding to those programs which educate and train the medical

personnel who are necessary to provide high-quality, culturally competent care to those who will be served in these facilities. We are literally disinvesting in those long-term assets—in this case, the human assets of highly trained physicians and physician assistants and nurses and technicians we will need to man this health care system going forward.

We can look at the projections. The huge increase in seniors requires additional resources and additional redeployment of these resources. That is not taking place in this budget.

I am also disappointed that the budget provides no additional funding for nursing education at a time when my State of Rhode Island and every State in the country is seeing a huge demand for nursing care. The nurses are a vital component of our health care system. In my State of Rhode Island, they are reaching out across the globe, spending three or four times what it costs to hire a local American nurse simply to fill their ward so they can continue to function.

This is an irony, too, because we are all looking for those jobs and those skills which will not be shipped overseas, which will not be digitized and sent away. Nursing is one of these high-quality skills. So it is not only for health care benefits, it is also for economic development. Yet we are struggling to try to help the nursing profession provide the resources to train new nurses in America. The result, of course, is we are taking them from overseas. This might benefit us in the short run but not in the long run. We have to ask ourselves: What is it doing to the health care systems in places such as the Philippines and other countries that are struggling to have adequately trained professionals in their ranks? We are essentially reaching out and taking them away. We have to do better. We can do better.

The budget eliminates funding for primary care and allied health professional training under title VII and decimates the scholarship program designed to encourage more disadvantaged and minority students to enter the health care workforce. Here again, we are trying to match up the talent and skills of Americans with the jobs we need to do, and we know we will need to do them in the future. That does not make sense to me.

His budget also eliminates the Universal Newborn Screening Program and the Emergency Medical Services for Children Program which help States institute effective newborn screening programs and promote research through improved trauma care for children.

There is no one in either body who will come to this floor and not speak about our obligation to the children of America. This is the sanctity of protecting them. But here are programs that operate effectively and efficiently to do that—screening newborns to detect very early if they have medical problems we must deal with rather than waiting later when these problems have, in some cases, overwhelmed the child and the family. This is a sensible, efficient approach to delivering health care services. It is not being supported in the budget.

The National Institutes of Health, the leading source of basic biomedical research, is also facing a reversal in funding. Less than 2 months ago, President Bush signed into law the first cut to NIH funding since 1970. Now he is proposing to cut funding to 18 of the 19 institutes, including the institutes conducting research on cancer, heart disease, and diabetes.

The National Institutes of Health, over the last several years, has been an example of a bipartisan commitment to raising their funding level, recognizing, again, that in order to confront health care issues in the country, we need the infrastructure of research, and not just to deliver effective treatment, but also we hope to get a bit of a handle on the explosion of costs in the health care system. When we stop investing adequately in the National Institutes of Health, we are locking ourselves into a situation where we will not have the new breakthrough drugs, the new breakthrough technologies, and we will not be able to deal with the host of issues confronting us. This is, again, a reversal of a decade of progress on a bipartisan basis to keep funding robustly the National Institutes of Health.

Health care services essential to our elderly population also were not spared. His proposed cuts to Medicare will inflict pain on the Nation's elderly without solving the growing cost of health care.

We all have to recognize, given demographics, given changes in the delivery of medicine, that the cost of health care has to be addressed. Not very much of what the President is doing is designed to address that cost. This is an issue which transcends party, transcends reason, transcends all of our individual interests, and it needs leadership by the President.

This budget is simply tweaking and cutting adversely benefits to seniors and not dealing in a responsible way with the acceleration of costs.

Medicare providers have already borne the brunt of several years of payment freezes and reductions, and once again, they are going to be included in this budget proposal.

I am also dismayed about the proposal to further cut home health care providers. The President talks about the importance of increasing access to home- and community-based services for the elderly and disabled seeking alternatives to traditional institutional-based care, but by cutting reimbursements to home health care providers, this budget sets in motion the exact opposite policy. Instead of encouraging people to move out of institutional-based care, which is typically more expensive, into home-based care, this policy would reverse that trend. Medicare spending on home health care has already fallen dramatically, from 8.7 percent in 1997 to 3.8 percent in 2005. There has been a squeeze on home health care and I think eventually that squeeze will provide a real disincentive for using what is both humane and efficient and effective care for seniors.

The Centers for Medicare and Medicaid Services, CMS, projects a decline of 2.6 percent of total spending by 2015 in the absence of a 2006 payment freeze. So what we are seeing is the rhetoric talks about the logic of moving people from expensive institutional care, hospitals, and other settings, into their homes. And, frankly, most people I know who are sick, the first thing they want to do is get out of that hospital. They recognize the wonderful care they are getting but to be home is just as helpful sometimes as any type of prescription in recovery for an individual. Yet we are contradicting that sensible policy in this budget.

With respect to education, we also see some of these cuts that are impacting adversely our educational programs at a time when everyone stands up and says we are in a global economy and we need to have the best educated students in the world. We have to emphasize programs that will make us competitive because we are in a struggle that is going to define the future of this country, its prosperity—indeed, its security. That struggle rests in large part on providing generation after generation of well-educated Americans.

We have new challenges. New Americans coming from around the globe who are coming into our public school systems require language training and cultural sensitivity and a host of other challenges that, frankly, didn't exist in the 1950s when I was going to grammar school and high school—grammar school at least. These challenges have to be met, and they cannot be ignored.

The President's budget, once again, showed his promise to retain America's competitive edge is not a promise that is backed up by the resources that are necessary. We understand we have to invest in math and science. This is increasingly a more technologically driven world. We are looking at countries around the globe, China and India, that are committed to bringing up their math and science capabilities. They have literally hundreds of millions of talented, bright people. They are beginning to make their presence on the world scene felt, their economic presence particularly. They are devoted to education. We have to be, also. That requires emphasis on math and science. But our students need more than just that; they need literacy and history and, most of all, qualified teachers in every subject matter.

The President's budget proposes a $2.1 billion cut to Federal education funding. This is the largest proposed cut in the 26-year history of the Department of Education, at a time when the President and his Cabinet stand up

and say this is probably the most important thing we can do to build the economic strength and vitality of America for the next several decades. Once again, the President has proposed eliminating the LEAP program. This is a Federal-State matching program that allows assistance for higher education support for low- and moderate-income Americans. It gives grants to the States. The States have to match the grants with their own money. It is a very valuable program. In total it proposes to eliminate 48 federally funded educational programs, including GEAR UP, Teacher Quality Enhancement, Even Start, TRIO Upward Bound/Talent Search programs. These TRIO programs are designed to go into minority communities and find students that have the talent but not necessarily the type of support they need to get through high school and commit themselves to go on to higher education. We have to do that.

We understand, again, if you look at the demographics, that this country is becoming significantly less White and more of people who are African Americans and Latinos—all of them. If we are not reaching out today into these communities and finding young people of talent and giving them the support and giving them the idea—which, for affluent families is obvious—that they can go to college, they should go to college, we are going to find ourselves decades from now—perhaps even sooner—with a population where we have not utilized their talent and we are not able to compete on a global scale.

All of these programs help do that. To eliminate them without any ability to respond in a meaningful way to these needs, to me, is shortsighted and wrong.

The Bush budget freezes the maximum Pell grant at $4,050. This is the fourth year in a row they proposed freezing this grant, and we know what is happening to college tuitions, they are going up. In 1975 the Pell grant covered 80 percent of the cost of a 4-year public college education. Today it covers about 40 percent.

Senator Pell was my predecessor in Rhode Island, from whose wisdom we all benefit today. He recognized back in the 1960s that if you allow young people to go on to college, you will reap benefits that are huge over many years. I wouldn't hesitate to say that a lot of the leading members of our community—in business, in politics, in anything you name—one of the reasons they are able to participate at this level is because 30 years ago, in 1967 and 1975, they were able to go to college and pay for it because there was a Pell grant that was providing 80 percent of the cost of their 4-year public college education.

Today, who are we leaving behind because they are saying: I would love to go on to college, but I can't afford it? Who are we leaving behind who will go to a school but not the school they could have gone to with this financial assistance and, as a result, whose career and whose contribution might be limited? I do not think this policy makes sense.

The President's budget also proposes to eliminate the Perkins Loan Program, leaving students with fewer resources to help them meet the cost of attending college. Perkins loans are another complement in our Federal arsenal of support to education that helps students make their way through college.

The majority has just pushed through a budget reconciliation bill which will cut $12.5 billion from higher education. This budget is saying we are going to cut more. We just made $12.5 in reconciliation cuts. How can we continue to do that? How can we cut the funds that we presumably have committed to spend and now send up a budget that will continue this very constrained support for higher education? And it is not just higher education.

If you look at some of the early education initiatives that are so necessary to children who have not yet even reached school, you have scientists each day pointing out how important it is for early childhood education to give children the skills and talents and the very idea that education is something they have to pursue vigorously all their lives. If you look at this budget you see, again, huge shortcomings. The President's budget proposal freezes funding for the Federal child care and development block grants for the fifth year. The administration's own budget figures show that 400,000 children will lose childcare assistance by the year 2011, and this is on top of the 250,000 children who have already lost childcare assistance since fiscal year 2000. These are huge numbers with huge impacts in every community across the country.

At the same time, because of the way the economy has been performing, the number of low-income children has been increasing. Poverty is increasing in the United States today as a result of many factors—globalization, the economic policies of the administration. We saw in the 1990s, again, not only a reversal from a deficit to a surplus, we saw poverty levels starting to decline. Along with those descending poverty levels we saw a lot of other positive social benefits. The numbers and percentages of abortions dropped because the economic situation for families seemed to be improving. This whole approach is increasing the demands of more low-income people, while at the same time decreasing the resources available. It does not make a great deal of sense.

Additionally, the budget would provide no additional funding for the Head Start and Early Head Start Programs, freezing funding at $6.7 billion. This results in the Head Start Programs in our country having to make very tough choices—eliminating almost 19,000 children, squeezing, again, the payments and the benefits they give to their workers, attacking or undermining the quality of the comprehensive services that are the cornerstone of the Head Start Programs. This is not good.

The President's budget also eliminates the community services block grant, which is critical to so many communities across the country. Again, this notion of the community service block grant was to give the local community leaders the resources because they have the sensitivity and clearer vision to what their particular community needs. When you squeeze these community service block grants, you put a huge burden on property tax payers because those individuals, all of us, will support local government. That is not as efficient or fair a mechanism for raising revenues as income tax or anything else, but that is the reality because local communities will have to put more burden on their local property tax payers or eliminate these services. That is an area of great concern, also.

It is not just health care and education, there are many other areas. One is energy. The President said in a frank admission, which we all appreciated, that the United States is addicted to oil. But like many people with addictive problems, I don't think the administration is seeking meaningful treatment. Gasoline consumption in the transportation sector represents about 44 percent of total oil consumption in the United States each year. If you include diesel fuel, that number jumps to 57 percent. To bring about any serious reduction in our dependence on foreign oil we have to increase the fuel efficiency of our cars and light trucks. So we need an increase in our CAFE standards. That is the first place we need to go that yields the biggest bang for the buck that will put us on a path to reduce significantly our energy consumption.

But that is not what the President is talking about. He is talking about renewing the fight for drilling in ANWR, a fight that culminated on this floor just a few weeks ago in a rejection of that proposal.

He is not pressing for the immediate technological fix of moving up CAFE standards. Once again, I believe this approach plays to our strength as a nation. We continually point to our technological innovation, our ability to use technology to solve problems. Here is a huge problem. Why don't we apply technology? I am always disconcerted when you look around the globe and see companies such as Toyota, for example, who have launched very successful hybrid automobiles. Where are the hybrids in significant numbers, and sufficiently sophisticated, by our own manufacturers? Ford has the Escape hybrid vehicle. This technology is not something beyond our capacity and capability, but the nation needs a budget and policy that will support technology development. You need action in Congress that will increase CAFE standards and increase gasoline mileage.

If we are talking about tax policy to help us avoid dependency on foreign oil, it is not cuts to dividends and capital gains and huge benefits to the wealthiest, it is perhaps providing tax support for those people and those companies that will put vehicles that get 45 or 55 miles per gallon on the road. We can build it. That might give us an advantage or another opportunity to reassert ourselves as the premier leaders in automobile technology in the world and the premier manufacturers, a position that we are losing.

In December, Senator SNOWE and I wrote a bipartisan letter, signed by 30 Senators, asking the President to fully fund energy efficiency and renewable energy programs authorized in the Energy Policy Act of 2005. When we passed the Energy Policy Act, we increased funding for energy efficiency provisions and renewable energy programs. Our letter must have been lost somehow because the budget cuts key energy efficiency programs such as building code programs, Energy Star, weatherization programs, and industrial energy efficiency.

I had a visit yesterday from architects from the American Institute of Architects. These are local Rhode Islanders. They pointed out that a huge amount of our energy is wasted because buildings are not properly designed and properly built to contain energy and use it efficiently.

We could have significant savings with improved building technology. It begins with some of these rather everyday programs such as building codes, weatherization, industrial energy efficiency—these programs are being cut.

I agree with the President. We need to end our addiction to oil. But to do that, our budget needs to support programs, initiatives, that reduce our dependency in the short and long term, and funding for energy efficiency and renewable energy programs will reduce our demand for fossil fuels such as natural gas and petroleum. Supporting energy efficiency and renewable energy is the best approach we can take to deal with the issue of energy dependency in the United States.

I have already spoken about the LIHEAP program. We must support LIHEAP funding because we have low-income families struggling and literally suffering today because they are caught in this vise of cold weather and high energy costs, and we have to give them relief.

The President also speaks, as we all do, about the need for good housing in this country. But again, this budget does great harm to the Housing and Urban Development Department. Overall, the Bush HUD budget proposes $33.6 billion in discretionary spending authority, as compared to $34.3 billion last year. That is a 2-percent cut—$622 million off the top.

I don't know anybody in this Chamber or our colleagues in the other body who will come to us and say we have solved the affordable housing problem. In fact, I think they would say this is perhaps one of the most persistent and difficult problems we have to face in every community in this country, the ability to rent affordable, decent housing, or the ability of a young family to buy a starter home. It is excruciatingly difficult.

Yesterday, we had representatives from our disabled community in our office, who are down here talking about the issues confronting them. The No. 1 problem they have is finding affordable, adequate housing for disabled Americans.

We talk about our commitment to people with disabilities, but when we have put resources to the rhetoric, too often the resources aren't there.

At a time when people need better housing, this budget is not responding. The President proposes to cut funding for programs to assist at-risk people with their housing needs, including a $190 million cut in programs to assist the elderly with housing costs, and a $118 million cut in programs to assist persons with disabilities with housing costs—that is the No. 1 concern of many families—and a $35 million cut in programs to support lead hazard reduction in public housing.

The section 8 voucher program is also underfunded, threatening families with the loss of their vouchers, threatening families who are now being helped to afford their housing and seeing that help disappear.

The President's budget will also cut the Community Development Block Grant Program by $736 million. We all know, because we have mayors coming into our offices constantly, that CDBG funds are a key element in allowing local leaders to help develop their communities. That is the kind of money that can be used very adroitly to leverage other funds to help economic development, to help renewable housing—all of these things which are so important. That cut will be devastating to the mayors in every community across this country.

The administration also proposes zero funding for the Brownfields Economic Development Initiative, which is a very smart way to redevelop formerly contaminated lands in our urban areas. These are areas of former industrial production that can be renewed, if we can environmentally restore or remediate the property.

There are also cuts to the Empowerment Zone/Enterprise Communities Program. All of these things go right to the ability of municipalities and counties to provide viable economic development which supports jobs and families in communities across the Nation.

Public housing programs, which serve more than 1 million children and more than one 1 million families with seniors in residence, would experience deep cuts.

The HOPE VI Program, which pays for the rehabilitation or replacement of dilapidated and rundown housing, takes public housing and transforms it into mixed-income housing.

We have seen one example in Rhode Island—a project in Newport, RI—which is transforming the whole neighborhood.

This HOPE VI program is going to be eliminated in the President's budget. It is the only significant source of Federal money for new housing and new opportunities.

The President also proposes to cut the public housing capital fund, which is the capital investment for public housing agencies. He proposes a $260 million cut there. Finally, the public housing operating fund is level funded.

Again, how do you level fund operating for residents and public housing at a time when costs all are going up, particularly energy costs?

I don't think there is any expert sitting around suggesting that the spike to $60 per barrel is a temporary phenomenon. Once OPEC realized they can get away with charging $60 a barrel and not provoke an economic meltdown yet in the world economy, that will be their target for the next several years, if not for the foreseeable far future. We are stuck with huge energy expenses, and those expenses will hit public housing and community-based activities heavily. If we don't respond by at least helping a bit, it is going to be an excruciating burden on municipalities and counties all across our country.

Let me finally also comment about the Defense budget. As I mentioned, this budget is highly invested in defense, and at this moment in history that approach seems to be unavoidable. I believe we should be responsible and pay for it rather than continuing to borrow these funds. But you can't avoid the obvious. We are still threatened by implacable, ruthless enemies. We are still engaged in a very difficult challenge in Iraq and Afghanistan. As a result, we have to continue to spend on our own protection and our national security.

But the administration again refuses to recognize that this is not a passive phenomenon. They talk about a long war, they talk about a generational struggle, but each year they come to us and say this is emergency funding for Afghanistan, for Iraq, for many provisions on the war on terror.

Since September 11, this administration has requested $440 billion in supplemental funding. A significant part of that, I believe, has to be internalized in the regular budget process. It is tough. It will require very tough, difficult choices, but it is the truth; it is reality.

The other thing I think we have to do, and the President has to lead us in, is we have to ask the American public to make sacrifices. There are people sacrificing today. Soldiers, marines, airmen, sailors, and their families are sacrificing dramatically. But that is a rather small spectrum of Americans.

I challenge anyone here to say what the President has asked of the average

American in terms of sacrifices necessary to support this war on terror. He certainly hasn't asked them to put their hands in their pockets and pay for it. He hasn't challenged them to stand up and do many other things.

This is reaching a level that takes on a moral proportion. We cannot continue this struggle without at least some commitment as a whole nation, not just those men and women in uniform and their families but the whole Nation to become engaged and involved in this effort.

As I said, many of the provisions in the budget of the Defense Department, the supplemental budget, I believe should be included in the regular budget process.

The President's budget has requested authorization for 482,400 active-duty soldiers and 175,000 active-duty marines since 9/11. Yet the Army has maintained an active-duty force of over 500,000, and the Marines have ranged from 178,000 to 180,000 personnel.

In a sense, the President is sending up a budget which has a significantly less number of personnel that are on active duty.

Again, that is not something that we know is going to go away. We have come a long way in the sense in March of 2003 or May of 2003 that we would have very few people in Iraq and Afghanistan, that it would be resolving itself.

We are in the midst of a very difficult insurgency, and these troops will be needed on duty and in uniform for at least the next years, or several years. I believe that should be included in the budget.

The Army and the Marine Corps have a huge pricetag for rehabilitation of the equipment they have been using—$68 billion. Many of my colleagues who have gone to Iraq and Afghanistan understand that. They are operating in the summertime at 120 degree temperatures in a sandy climate. That eats up the equipment. We have helicopters operating at 15,000 feet in thin air, and that chews up the engines in very difficult conditions. We know that. We know we have a price tag of $68 billion, and, yet a small fraction of that is being, I think, inadequately included in the budget. When it comes to defense and national security, we have to provide the money to do it reasonably and responsibly.

We are looking at a deficit as far as the eye can see. As we look at the huge commitment by our fighting men and women in Iraq and Afghanistan, I would think you would see a shift in the administration approach; I would think you would see the President stand up and say we have to pay for these things. It is a long-term effort, and we can't let this devastate and overwhelm us because we know eventually, as we have seen in the past, there is no free lunch.

We can borrow the money today—billions and billions of dollars—but eventually interest rates will start creeping up, start shutting off economic productivity here in this country, and we will see inflation begin to bump up. We will see all of the dangers and all of the difficulties that we thought in the mid-90s we had turned the corner on, at least because our policies were taking hold in terms of dealing with the deficit, funding reasonably and responsibly, and actually seeing that result in not only economic growth but growth that was lifting up all of our citizens. We are looking at increases in income and wages, not just at the top level but at the middle- and low-income levels of our economy.

The reverse is true today—huge increases in upper income compensation and benefits—spectacular. If you were in such a position, you would be quite wealthy. But if you look at the bottom wages, they are stagnant and falling. That is not going to produce the kind of country that will support families, support individuals, and make us more productive in the future.

I hope we will look carefully and closely at this budget and make appropriate changes.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

TRADE DEFICIT

Mr. DORGAN. Mr. President, this morning about 8:30 the administration released the information with respect to the 2005 trade deficit that our country has experienced. The trade deficit for all of 2005 was described this morning as $728 billion. That means about $2 billion a day every day, 7 days a week. That is $2 billion a day more in imports from other countries into our country's marketplace than we are exporting to them, and it relates to the lost jobs that are such a problem in our country. When you import products from abroad, twice as much as you are able to export to other countries, you are in effect exporting America's jobs.

The chart I show now shows the number with China alone. Almost one-third of the trade deficit is with China. We can see what has happened with China from 1996 to 2005. The trade deficit has gone up, up, way up every single year. It is out of control. This trade deficit is reflective of, once again, a massive number of American jobs being shipped to China. Then they produce products and ship the products back to our country. It weakens our country. It means we lose jobs. We lose economic strength, especially in the middle class. It is a crisis we must address.

There is no social program as important as a good job that pays well in this country. We will debate social programs now for weeks and weeks because the President this past Monday sent us his budget for the next year. We will debate about the need for social programs. But as I said, there is no social program, in my judgment, as important as a good job that pays well. That makes everything else possible for an American family.

Let me talk a minute about these good jobs. The good jobs are leaving. Ford Motor says 30,000 people will be laid off. At General Motors, 30,000 people will be laid off. It goes on and on. Increasingly, companies are moving their jobs from the United States to China, to India, to Bangladesh, to Indonesia. So the jobs that remain are jobs that have a downward pressure on wages, more and more pressure to get rid of retirement programs, more pressure to strip health care benefits. In my judgment, that is going to head this country toward serious trouble.

This economy works because we built a broad middle class and people go into their jobs often with job security for nearly a lifetime. At Ford Motor Company and General Motors, when people went to work there 40 years ago, they often stayed there for a lifetime. Now, of course, that is not the case.

General Motors called its 300 top parts suppliers to a meeting in Detroit recently and said, by the way, we think you need to be moving your jobs to China to cut costs. So General Motors says it. The parts supplier which split off from General Motors, called Delphi, which is now in bankruptcy, says it. They want to pay $8 to $10 an hour.

What is going to happen to this economy if we continue to see downward pressure, fewer jobs, fewer good jobs that pay well, downward pressure on wages, and we see more and more of these jobs being exported to other countries? I think I know the answer. The answer to that is we will have less and less opportunity in our country, less economic growth, and we will have fewer good jobs left.

My colleague LINDSEY GRAHAM from South Carolina and I yesterday announced a piece of legislation we have introduced that would change what is now called PNTR with China. PNTR is permanent normal trade relations. That means China now has normal trade relations with our country. It is permanent. It did not used to be that way. We used to have to vote every year on whether to extend what was then called ''most favored nation status,'' now called ''normal trade relations.'' We used to vote on that every year. But it became permanent in 2000 and we no longer vote on it.

My colleague LINDSEY GRAHAM and I decided we wanted to revoke permanent NTR and restore again an annual debate in this country about China and about trade with China. I don't mean to say China is the only issue because it is not. Obviously, with this chart we can see the single largest trade deficit is with the country of China. It is

growing, it is significant, and it is dangerous.

By the way, most of this Congress and the White House will simply sleep through all of this. They are not awake for these issues; no one thinks this is a problem; no one cares much about it. So what if it is $2 billion a day more than we import than export? Who cares? Another 30,000, million or 2 million jobs shipped overseas. Who cares? It is not anybody at the White House who loses their job, so we do not hear about this. But for a lot of the American families, it is a very serious problem.

We believe a significant part of the problem rests with China. Almost a third of that trade deficit is with China. China's markets are still too closed to our products. They say they are open, but they are not. China is awash in counterfeit goods and piracy. Two-thirds of the goods that come into our country that are counterfeit goods come from the country of China. And China does nothing about that.

China, as we know, is an attractive place for American companies to move their workers. I will not do it today, but I have given plenty of examples—Huffy bicycles, Radio Flyer, Little Red Wagons, Etch-a-Sketch—I could go on for a long period of time. Those jobs go to China because you can hire people for 30 cents an hour in China. You can work them for 7 days a week and you do not have to give them a day off for months. And the Chinese Government looks the other way. You can do that in China. You cannot do that here.

So that is why these companies are moving their jobs to China. American companies move their jobs to China. They produce the product, ship it to the United States to sell it in the U.S. marketplace, and then they run their income through the Cayman Islands, in a tax-haven country, so they do not have to pay taxes or at least avoid as much as they can of their tax burden. It is a very serious problem.

In discussing this issue of normal trade relations, we have to remember who we are dealing with. Yesterday, my colleague from South Carolina, LINDSEY GRAHAM—described the case of a man named Shi Tao. Not many Americans, perhaps, know Shi Tao. But Shi Tao was sentenced, in April of last year, to 10 years in prison. He happens to be a journalist. He was ''divulging state secrets,'' which is the reason he was sent to prison in China. He is a former staffer at the Contemporary Business News agency. He was convicted of sending to foreign Web sites the text of a message from authorities in China warning journalists of the dangers of ''social destabilization'' from the return of certain dissidents on the 15th anniversary of the Tiananmen Square massacre.

So he sent this to some foreign sites, and, as a result, he was charged with ''divulging state secrets'' and sent to prison. Much of the evidence against him came from a company called Yahoo!, an American company. The Chinese Government traced the e-mails sent by Mr. Shi Tao—a journalist—they traced those e-mails with the cooperation of Yahoo! They asked Yahoo! to provide the information. Yahoo! did. And now this fellow is in jail for 10 years for passing on an e-mail by the Chinese Government that said they worried about the dangers of ''social destabilization'' from the return of dissidents on the 15th anniversary of the Tiananmen Square massacre.

Reporters Without Borders, an organization that we hear about these days, has complained that Yahoo! has disregarded ethical concerns in an effort to maintain a good business relationship with the Chinese Government.

There are other cases that are similar to this.

Last month, Google, an American company—a great American success story, I might add—agreed to censor its search engine results in China, agreeing to free-speech restrictions in exchange for better access to the fast-growing Internet market in China.

This shows you the power of money and profits over ethics and morality when it comes to doing these kinds of things.

Google, last month, rolled out a new version of its search engine that is easier, specifically for use in China. What has happened is, previously Government barriers that were set up to suppress information had prevented the Chinese users from using Google at all. So in order to obtain a Chinese license, Google has agreed to omit Web content that the country's Government officials find objectionable. That includes information about Taiwan's independence and the Tiananmen Square massacre, and so on.

It is particularly concerning, I think to me and to a lot of others, that we have American companies helping the Chinese authorities track down a journalist who did nothing wrong, was engaged in some free speech, and now sits in prison for 10 years.

But I digress. My main point is that we have a pretty serious trade problem.

It is a trade problem that is significant in a lot of ways, and is by no means limited to China. We run very large trade deficits with everyone with whom we have had a trade agreement. We run big trade deficits with Mexico. We run big trade deficits with Canada, with Europe, with Japan, and yes, with China. A part of it, of course, is the basic incompetence of our trade negotiators. And the other part is a trade strategy that has been embraced by this and previous administrations and this Congress that chants about ''free trade''—not caring, of course, whether trade is fair—and has allowed American corporations to decide to structure trade in its own image. And that image is to decide it wants to produce where it is cheap; that is, take Huffy bicycles away from Ohio and fire 900 workers. Move it to China, pay them 33 cents an hour, work them 7 days a week, 12 to 14 hours a day, and then send the Huffy bicycles to America to be sold in Sears, Wal-Mart, and Kmart and believe that is good for our country. It is not.

It might be good in the short run for some consumers in this country, but, after all, America is not going to be measured in the long term by what it consumes. It will be measured by what it produces. Economic health is about what you produce, not what you consume.

I believe this morning's announcement will produce one more large yawn at the White House, one more large yawn in the Congress. I do not know exactly what it is that is going to provide a tipping point that will finally convince policymakers we are headed toward very serious trouble. It is unsustainable to have a fiscal policy that increases the debt in this year from our budget policies of $704 billion and a trade policy that increases the trade debt in this year of $720 billion. That is $1.4 trillion in combined debt. That will choke this country.

We know better than that. We know what to do. We know better than to sit around on our hands and gnash our teeth and wipe our brow. We need to get busy and solve these problems. But first they have to be recognized. There is this blissful ignorance these days about a fiscal policy that is wildly off-track and a trade policy that has not worked for some years, that is shipping America's jobs overseas and weakening this country.

This Congress and this President have a responsibility to address this head on. My colleague, LINDSEY GRAHAM from South Carolina, and I joined on the legislation I described yesterday, and I hope my colleagues will support it.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FAIR ACT

Mr. SESSIONS. Mr. President, I want to share some thoughts on the asbestos litigation legislation that is before us. We have a point of order raised. I believe that point of order is a technical point of order. I believe it is not a point of order that has the potential to avoid a large amount of Federal expenditures. In fact, as we all know, the asbestos bill is funded by those companies and defendants who are being sued as an alternative to paying out money from aberrational, disjointed, inconsistent lawsuit verdicts, with 60 percent of that money going to lawyers both for the defendant companies and for the plaintiffs. They propose to pay

this money into a fund, allowing it to be distributed, with 5 percent or less attorney's fees cost, directly to those who are determined to be sick from asbestos.

Surely, we can make this happen. Surely, we cannot allow the spasm that now exists, that is an embarrassment to the legal system, embarrassment to the profession of law, and an embarrassment to Congress for failing to fix it, when the Supreme Court and other judges have, on numerous occasions, called on us to fix it. That is what I would point out.

I was hoping that this afternoon we would be able to discuss votes throughout the day, amendments. Senator CORNYN has offered an amendment, and we have had votes. There are others out there.

I will point out amendments that I have offered and plan to offer which deal with the subrogation issue, particularly involving longshore shipping companies, where they are self-insured, and those companies are entitled to subrogate to some of this money that would come out, under normal circumstances, to money that is paid to the victims. And for a lot of reasons, I think they are in a specific special place that needs some relief. The silica claims, we need to consider that more carefully. I have proposed legislation that if this bill were to fail, the 5-percent cap on attorney's fees would apply, or the court would apply standards of comparable attorney's fees instead of allowing such a large chunk of money to be taken from the victims and their recovery to pay attorneys, as is the case today.

We have some medical criteria in the bill; that is, if you are going to be sick, how do you know it was caused by asbestos; what do you have to show before you can make a claim so that we can pay those who are sick but not pay those who are not sick; or if those who are sick have a sickness unconnected to asbestos, they should not recover from the asbestos fund; otherwise, we would have a fund that can't survive. That needs to be tightened.

Those are some of the amendments I would like to offer. We will get on that presumably next week after we vote on this point of order.

I urge my colleagues not to allow this budget point of order to derail the opportunity we have today—it may be the last, best opportunity—to fix an asbestos system that is out of control. It is just not working right. Under the present system, we are going to have—and we have today—thousands of people who have been injured by asbestos. Many of them are veterans—thousands of people who are injured, some severely, some dying as a result of their exposure, who will not be able to recover any money because the company against which they have a lawsuit, the company which was responsible for exposing them to asbestos, no longer exists. They are bankrupt, and there is no one to sue.

Secondly, we have a large number of companies—77—that have gone into bankruptcy, and many are in bankruptcy now. If we allow this uncontrolled rush to take every dime out of those companies as quickly as possible, as the lawyers for the individuals who are sick are trying to do, those companies, too, will go out of existence.

There are other reasons certain people are not going to be able to recover who are sick from asbestos. This bill would give everybody a chance to have a fair recovery, so I believe it has a big humanitarian benefit.

Also, if we leave these cases in the litigation system, a jury might become inflamed or become sympathetic for a victim and may render a $100 million verdict. Another jury may render a $100,000 verdict. Another jury may render nothing. So we have really aberrational allocations of scarce resources to people who are sick. We need to have a comprehensive system by which those who are sick are compensated fairly, promptly, and without attorney's fees.

There is no doubt, as we know, that the attorney's fees, according to the Rand Corporation, total 58 percent of the amount of money paid out by the defendants. So defendant companies hire their own lawyers, and they are being sued for huge amounts of money, and they hire the best lawyers they can get. They defend those cases. One study shows they get a little more than plaintiffs' attorneys. Then the plaintiffs' attorneys sue, and they take their fee out of the recovery. If you look at it in an economic sense, all of the money paid out by the defendant companies should go to the victims, as much as possible. They should not have to pay a chunk to their own lawyers or a chunk of it to the plaintiffs' lawyers.

We have 60 percent at stake. This bill caps the attorney's fees at 5 percent. So we are talking about 53, 55 percent of the money being paid out by the defendant companies, and it is not getting to the victims. So we have a lot of ability here to do the right thing. We can get more money promptly to victims. We can get victims compensation who otherwise would not get it because the companies they might sue are no longer in existence or there are other legal impediments to it, and we can treat people fairly, and people similarly situated would get similar amounts.

For example, mesothelioma, the deadly cancer that has been connected to asbestos exposure, would result in a prompt payment of $1.1 million to anybody who has contracted that disease due to asbestos exposure. If the doctor diagnoses that and it is not a diagnosis of any real dispute, you simply go in to the claim administration, make your claim, and 50 percent of that $1.1 million is to be paid within 30 days and the additional 50 percent paid in 6 months.

That kind of process is quite different from what is happening today. There are 300,000 lawsuits pending in America. Some dockets have tens of thousands of lawsuits and only a handful of judges. These cases are not going to trial immediately. People are not getting paid promptly. It is an embarrassment to all of us. Some people are getting paid aberrationally and without consistency or fairness. Some are getting a lot, some are getting nothing. Some people are getting paid little checks over a period of 10 years, and there from different companies that settle up. That is not a way to handle a mass tort, where a lot of people are ill, in which the defendant companies are prepared to pay.

All of that is not working right. We ought to take those companies' money—$140 billion of it—and set it aside in a fund and create a fund from which we can pay people whenever they are sick. That can be done, and that can make the system better.

It was interesting to note that we don't often see a lot of agreement between the Washington Post and the Washington Times. But the Washington Post had an editorial today in which they say:

> Some amendments may be reasonable at the margin, but the bill's central idea to replace litigation with a $140 billion compensation fund, to be financed by defendant companies and their insurers, must be preserved.

They go on to say:

> The fact that the bill is being attacked from both directions suggests that its authors, Senator Arlen Specter, Republican of Pennsylvania, and Senator Patrick Leahy, Democrat of Vermont, have balanced competing interests in a reasonable manner.

I am not sure that is totally correct, but there is some truth to that. It says:

> But the truth is that the bill's main opponents are the trial lawyers who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are, in fact, model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

That is the Washington Post. I certainly agree with that. The special interests here are those who have lost sight of the victims, who have lost sight of trying to create a justice system that works; the special interest of those people engaged in the system who are enriching themselves in it every single day and do not desire to see it end.

But I will note that Dicky Scruggs, one of America's most prominent, perhaps the most accomplished trial plaintiff lawyer in America, who lives in the Mississippi gulf coast area, where asbestos was such a bad problem at the shipyards, commenced this litigation many years ago—maybe 30 years ago. He just appeared with Chairman SPECTER and said that enough is enough. We don't need this in the courts anymore. Not enough money is getting to the victims. The system is not working. We need change. He supports this bill. He believes there is sufficient money in it to take care of

those who are sick, and he supports this bill that has my amendment in it that limits lawyer's fees to 5 percent, unless it goes on appeal.

If the lawyer comes in with a client with mesothelioma, gets a doctor's report, spends a few hours on that, talks with the client, files a claim with the board and they give him a date, and they walk down there and have the doctor's report and the physician says this person has mesothelioma, he is entitled to $1.1 million, and a 5-percent fee is $55,000. That ought to be enough. Yet we have people saying that we cannot have these fees. We cannot cut these fees. This is too much.

We are creating a trust fund. If you file a claim for a person under the Social Security Act, the Federal law limits your attorney's fees. If you make claims in workman's compensation cases in most States, attorney's fees are limited. It is perfectly proper to do so. I believe 5 percent is adequate.

The Washington Times said this. It is a conservative newspaper here:

> This bill should pass; Senator Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggle with a resolution. The victims and their families deserve to be made whole.

I believe those were strong and appropriate words.

Then they comment on Senator REID, the Democratic leader. They say:

> Mr. Reid said the bill benefited ''a few large companies'' while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants AllState and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality, the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts.

That is who the big guys are who are making the big money. They say:

> . . . the FAIR Act offers what nothing else previously has: A light at the end of the tunnel for claimants.

I think one estimate I have seen has been that $70 billion has been paid out to date to victims of asbestos. Somebody said the figure is more than that. Think about this: think about the fees. Let's say 25 percent of that is a legal fee. Some make more than that. Some of the numbers show 25 percent as an average total when all is said and done. But most fees are normally one-third. What is 25 percent of $70 billion? What, $18 billion? That is going to lawyers. These are not thousands and thousands of lawyers. Really, I would say there are probably no more than a few hundred plaintiff lawyers who are handling well over 50 percent of the cases. So it is an incredible amount of money. We could create a system where you can walk in with a medical report, basically, and have your compensation delivered to you promptly, without all these fees being taken from it.

Why can we not do this? That is why independent groups such as the liberal Washington Post and the conservative Washington Times have both endorsed the bill. I am hopeful that we will, over the weekend, take a good look at the budget point of order that has been raised here. When my colleagues look at it, I hope they will conclude that this is not the kind of budget point of order which was contemplated when this rule was passed. This budget point of order arose from Chairman GREGG's brilliant understanding that many of our entitlement programs are drafted in such a way that when they score that bill, they score it over a maximum of 10 years. People write the bill so it will cost more the next 10 years than it does the first 10 years.

If the Government is starting an entitlement program, you can object if you can show it goes up too much in the outyears, which I think is a good reform. But this bill is not Federal taxpayers' money. This bill represents money that will be paid into the fund by the people who are paying out money now to victims in a willy-nilly, random fashion that is unprincipled and unjustified. They will put the money in voluntarily in exchange for not having to hire a bunch of lawyers to defend themselves in courts in every jurisdiction, virtually, in this country. That is what they are trying to do.

The legislation does not impose any cost on the American taxpayers, and if the fund was to collapse and not have enough money in it, then the taxpayers do not pick up the tab. They do not pick up the tab. The cases go back in the courts, and any companies that still exist would have to pay, just like they would before this reform passed.

I think this budget point of order, for reasons I am not clear about, lies apparently in a technicality. It does not lie in the classical understanding of its purpose to protect the Federal taxpayers because this is not taxpayers' money; it is the defendant companies' money.

When we vote on this budget point of order early next week—I am a member of the Budget Committee. I know Senator CORNYN is and others are who care about the budget. We meet every day and we take heat every day for trying to constrain the growth of spending and entitlements in this country in a rational way to meet the needs of our people. But to stop the abusive growth in these programs, we support a balanced budget. We support containing spending.

Many of the people who are supporting this objection, however, have not demonstrated, in my view, any important interest over the years in containing spending. A lot of them are big spenders.

That objection, while technically is legitimate, does not in any substantive way have an impact on the debt of the United States in the next 30 years as this act would be enforced.

I urge my colleagues to look into this point. Do not allow this supermajority vote. To keep the bill on track, 60 Senators will have to vote to waive this point of order. It would be a tragedy, indeed. When we see Senator LEAHY, Senator SPECTER, and Senator SESSIONS supporting a piece of legislation, when we see the Washington Times and the Washington Post supporting a piece of legislation, when we see the veterans groups incredibly anxious to see this legislation passed, and when we see overwhelmingly the businesses that are involved in this process and are paying out this money that want to see it passed, why can't we get it passed?

Let's not allow it to fall on a supermajority vote of 60 instead of the normal 50 required to pass legislation. I hope everyone will study it, and when they do, I think they will feel comfortable in voting to waive the budget point of order.

NSA WIRETAPPING

Mr. SESSIONS. Mr. President, I wish to share some thoughts about NSA, the National Security Agency, and the wiretaps that have taken place, the brouhaha that has occurred in the press and in Congress, and why I believe this program is necessary, why I believe it is legal.

I know the Presiding Officer has been, perhaps, the most eloquent spokesman in the Senate on this subject. He believes this is legal and proper and has articulated those views very ably.

I shared some thoughts the other day about why it is so important, why there is much political goings-on here instead of substance, and why we need to continue with the program. I would like to share a few more thoughts today about the care the administration took to be respectful of Congress, to not overreach their legal authority, and how they worked to keep Congress briefed on what the program was about.

The administration officials briefed congressional leaders more than a dozen times on the terrorist surveillance program. More than a dozen times they went before the proper senior officials of the U.S. Congress—in the House and Senate, both Republican and Democrat—to advise them about what this program was about and what they were doing. That includes the majority leader of the Senate, who is Republican, the Democratic leader, Mr. REID, and before him, Mr. Daschle. In the House, it includes the Speaker of the House and the Democratic leader. It includes the chairman of the House Intelligence Committee and the ranking Democrat on the House Intelligence Committee; the Senate Intelligence Committee chairman and the ranking Democrat on the Senate Intelligence Committee. Those are what they call the big 8—or The 8. The Intelligence Committees deal with these highly classified programs involving national security.

We have always understood that you cannot tell 100 Senators and 435 Congressmen a bunch of secrets because if you do, they will leak. As a matter of fact, I am sometimes even amazed the eight can keep a secret, but apparently they have done well, at least until the recent leak, and we don't know where it came from. It may well have come from another source.

These eight are briefed on the program. These are the top people in Congress. They are not children. They are not people who can be pushed around. They are grownups holding particularly high offices. If they have a problem with the program, they are not children; they know when it is time for them to speak up, if they have an objection, to raise it, and they did not object. There were no objections made, no call to stop this program by any of those eight people who, over a period of years, were informed.

It actually is more than eight. As I noted, we have had two Democratic leaders, Senator Daschle and Senator REID. We had Senator TRENT LOTT, as well as Senator BILL FRIST. We had Senator RICHARD SHELBY, as well as Senator PAT ROBERTS. So there are 15 members who have been briefed on it and had an opportunity to object and have not objected.

Then all this stuff hits the fan in the newspapers and everybody gets excited about it. We have some Democrats saying it is illegal and that it ought to be stopped. They are saying it is illegal. But if you noticed one word they didn't utilize, it was ''stop.''

They caused all this fuss revealing to the world many of the capabilities of the system, making the system less effective than it could be. In fact, Porter Goss, the head of the CIA, has said it has rendered severe damage to our intelligence capability. They did not say stop. Nobody is saying stop. Nobody has submitted a resolution in the Senate to say stop. Nobody has introduced legislation, which they have every right to do, and which we in Congress have a right to do, to cut off funds for this program.

We could end this program tomorrow. All we would have to do is come together as a Congress and say there shall be no Federal dollars expended to carry out a program of surveillance such as this. They would end it just like that.

That has not been proposed. Why has it not been proposed? Because it is idiotic to stop a program such as this. How stupid can we be if we eliminate a program such as this?

There is an article in the Washington Post—it is breathtaking really—in which Senator BIDEN said:

> I don't understand why you would limit your eavesdropping to only foreign conversations,'' said Senator Biden to Attorney General Gonzales.

The article seems to suggest, after complaining about the program, they should have wiretapped more people when both ends of the conversation were in the United States.

Perhaps we should consider that. I think there is a realistic basis to conclude that the President has that power if it is relevant to the security of the United States of America. You just have to read through the lines. I was not in the meetings. I am on the Armed Services Committee and I am on the Judiciary Committee where we had a lot of these discussions and hearings. The President and his team at one point said: What about legislation, can we pass legislation?

All the people who apparently discussed this matter were in uniform agreement that if we brought a bill up to specifically authorize this kind of wiretapping, it would cause a lot of discussion in the Senate, and it would reveal to the world the program. So the President basically said: I believe under the authorization of force you gave me to act against al-Qaida, who has declared a war on us and we have declared a war on them, I have the power to do that on international calls; I am confident in that.

His lawyers have written opinions and briefs. They researched the history, and he concluded that he did, and that is what he basically told the eight Members of Congress, and they did not object. They could have said: No, you have to introduce legislation. That is a reasonable statement for any Member of Congress to make to the executive branch: Mr. President, if you think we can write legislation that would allow technology like this to be legal, explicitly by statute, we will have to write it in such a way that it will obviously reveal to those we are trying to surveil what we are doing and what our capabilities are, and it will undermine the program.

President Bush told us straight up in more than one speech: It is my responsibility to defend the people of the United States of America. That is what he said his responsibility was, and I believed it and the American people believed it and we said yes.

He said: I am going to use every tool I have to defend this country. We said yes, and this is one of the tools he has, and he decided to use it. I think he did so in a very appropriate way. Congress has been advised of that.

Some have said it broke the FISA law; it did not comply with FISA. Attorney General Gonzales made a very nice point, a very important point. FISA claims to be the exclusive means of electronic surveillance, and people have cited that principle, but it actually contains numerous exceptions, such as a 15-day exception after a declaration of war in section 111 of FISA, a 72-hour exception for emergency surveillance under section 105, and finally there is an exception for surveillance authorized by statute in section 109.

The idea clearly is that there would be further statutes passed that would expand the FISA law as circumstances develop.

Then Congress, after 9/11, passed the authorization for use of military force against those whom the President finds are responsible for attacking us on 9/11. He has defined that narrowly as al-Qaida. We authorized the President to use all necessary and appropriate powers to surveil or to attack al-Qaida, to go after al-Qaida.

As the U.S. Supreme Court in Hamdi declared, they said the U.S. military can capture, detain, lock up, put in jail as a prisoner of war an American citizen who has associated himself with al-Qaida in the war against the United States without a trial. We have authorized our military under the authorization to use force, to go out and kill the al-Qaida people wherever they are in the world as they are deemed to be at war against us. So it stretches a bit to say you can't intercept their telephone calls. You can lock them up without trial, put them in jail and restrain their freedom—even an American citizen, you can kill them on the battlefield without a trial or a Miranda warning, but you cannot surveil their phone calls.

What the Supreme Court said in Hamdi was that although the authorization to use force did not specifically authorize locking up people and holding them as prisoners of war, it is a natural incident to the power given to the President to conduct war. The power to conduct war is also the power to detain and restrain people who are at war against you.

Attorney General Gonzales has made a very compelling argument. How much less of an invasion of a person's liberty is it to listen to their phone conversation than it is to lock them up in jail? So a natural incident to the conduct of a military operation, since the beginning of warfare—certainly in modern times—has been surveillance and intelligence-gathering operations. We worked tirelessly to break the German code. We worked tirelessly and broke the Japanese code. We were able to listen in on their conversations. That is what you do against an enemy; you try to find out what they are doing and how they are planning it so you can stop them.

I am confident a rational interpretation of the authorization to use force to go after somebody militarily includes the power to detain prisoners, as the Supreme Court has said, and also would include the power to intercept the communications of the enemy.

This is consistent. Maybe ''amendment'' is not the right word to FISA, but it is a statute passed in harmony with the concept of FISA when it was passed. It is a subsequent statute that would take priority over the past statute.

Another argument is the past statute was more explicit about these intelligence matters and said this was the sole way to do it. But I don't think you can interpret an authorization to go to war in any way that would prohibit intelligence-gathering operations. Indeed, the Hamdi case held that previous statutes that said you could not

lock people up under these circumstances were overridden by the authorization to use force because a necessary incident to utilizing military action against the enemy is to lock up people you capture.

There is also, I believe, a good argument to be made that the President has inherent authority as Commander in Chief and a duty consistent with that authority and responsibility to protect the people of the United States. Every Federal court to have decided the issue has held—including the Third Circuit, Fourth Circuit, Fifth Circuit Courts of Appeals—that this is so. These cases involve surveillance that occurred before the FISA was passed, true; but in 2002 a FISA court of review relied on those cases. The FISA Court, created by FISA, relied on those previous cases to make this ruling:

FISA could not encroach on the President's constitutional power.

That is In Re Sealed Case, in 2002.

Former Attorney General Griffin Bell, himself a long-time Federal judge who was called in to be President Jimmy Carter's Attorney General when FISA was being considered, was asked about this and the President's inherent power. Judge Bell, if you have known him, in that inimitable way he has, said, ''We can't change the Constitution by agreement.''

I would add, a statute can't amend the Constitution. FISA cannot eliminate the powers of the President, those inherent powers to defend America or to authorize electronic surveillance of an enemy with whom we are in combat, al-Qaida, in a time of war. Authorization for force, the President's inherent power—these are clear, I believe, authorizations of force.

We will have a lot of debate about it. We will have a lot of discussion about it. But as you look at it more and more, I think people are becoming confident that these powers exist. Now we have a recent article saying, Why don't you do even more, if you have this power?

Should we pass legislation? Let's talk about it. I think one thing we need to take out of the FISA law is the pretension that it represents the only authority the President has in these areas; that every act has to be done within the FISA. To that extent I believe it is clearly unconstitutional. Those words are not legitimate. They need to come out. We should not pretend to say we have the exclusive power in the legislative branch to override the President's responsibility to defend this country.

Then if there are other ways we can write the statute, I will discuss it. But I frankly am not sure it is going to be a successful enterprise. It is going to be difficult to write a statute that would draw the line on where the President's authority exists and where it does not. Tell you what, I get nervous, I get a little worried when we at a given point in history start writing a statute to define the ultimate power of the President and propose to contain that power because you never know when we will have a problem with it.

The Church Committee came out with this wall, a wall of separation between the CIA and the FBI, and many believed that wall was responsible for the lack of sharing of information between the FBI and CIA. They thought they were doing it for constitutional reasons. They thought they were doing a good thing. But we realized that was a disaster and we tore that wall down many years later, 20 years later, as a result of the experience we had with 9/11. So I would express my concern about statutes dealing with treatment of prisoners or surveillance, that we need to be careful about how we do that. I think the American people believe there should be some flexibility for the President in matters that could relate to our national security and the lives of our own citizens. We need to be careful as we go forward with that.

But to date, we can say a couple of things with certainty: that the leaders of the House and the Senate were informed fully of what the President was doing. They did not object. And the Attorney General has made a compelling case, I believe, that he was authorized to do these national security intercepts, both by the authorization to use force and by the inherent powers given to the President. I would note, also, that the President's narrow use of a power is something that should be appreciated by the critics. He said it can only involve a phone call that is international and a phone call from al-Qaida, in which one member of the call was al-Qaida.

If we do those two things, the average American can be sure they are not getting caught up in it. To hear the news articles, of course, it was domestic spying. That is far from the reality of this situation.

I ask unanimous consent that the recent editorials of the Washington Times and the Washington Post be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Feb. 10, 2006]

THE ASBESTOS DEBATE

There are three questions the Senate should focus on as it considers the Fairness in Asbestos Injury Resolution Act: Will the proposed $140 billion asbestos trust fund actually cost $140 billion, or will its fine print eventually require it to payout much more? Can the medical criteria be tightened to ensure that only people who have genuinely suffered harm from asbestos are compensated? And how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

This bill should pass; Sen. Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggled with a resolution. The victims and their families deserve to be made whole.

One good sign is the 98–1 Senate vote Tuesday to move forward, indicating broad agreement that the FAIR Act is acceptable as a starting point for the full Senate's debate. The other is trepidation from Senate Minority Leader Harry Reid: After making noises about a filibuster, Mr. Reid said the bill benefited ''a few large companies'' while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants All-State and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts. Under the FAIR Act, fees for lawyers top out at five percent of the award—far less than they get in court.

Of course, there are good reasons to worry about the ''little guy''—just not the ones Mr. Reid suggests. If previous federal ''trust fund'' schemes are any indication, this fund could bleed billions of dollars only a few years from now and demand either a federal bailout or a return to the courts. The first is bad for the average taxpayer; the other is bad for most claimants. As for the first, the nonpartisan National Taxpayers Union opposes the trust fund on the grounds that a bust is likely. It calls the fund ''a fiscal time bomb.'' The second would land claimants back in limbo in courts (to the great pleasure of asbestos lawyers, of course, who clog up the system with questionable cases).

The precedents show how daunting this month's debate will be. As we've reported previously, only one of the many smaller trust funds created over the years has been able to meet its obligations, according to Francine Rabinovitz, a trust-fund expert at the University of Southern California. Last year she told Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, that ''none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims.'' Claims against the Johns Manville bankruptcy fund—one flawed effort to solve asbestos-injury claims—outstripped resources by a factor of 20.

That begs some questions. Will this $140 billion fund ''sunset'' in three years like its conservative critics say it will? Even the Congressional Budget Office predicts it will bleed $6.5 billion a year by 2015.

What about the medical criteria? A group of conservative senators on the Judiciary Committee worried about the fund's solvency cited this among concerns when they sent the bill to the Senate floor last year. Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, said that they were ''deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants.''

This debate will play out fully in the Senate over the coming days. In the meantime, it's worth pointing out what the FAIR Act offers what nothing previously has: A light at the end of the tunnel for claimants. Under FAIR, compensation ranges from $25,000 for people who suffer breathing difficulties to as much as $1.1 million for victims of the deadly cancer mesothelioma. It has taken long enough to get this far. The Senate is close to leading the way out.

[From washingtonpost.com, Feb. 10, 2006]

FORWARD ON ASBESTOS

In a triumph of good sense and bipartisan cooperation, the Senate voted on Tuesday to go forward with a bill that would fix the broken asbestos litigation system. Hundreds of thousands of asbestos injury claims have already landed in the courts, contributing to the bankruptcy of more than 70 companies.

Without reform, this process will drag on, triggering the bankruptcy of yet more firms, many of which have only tenuous asbestos connections, because the main firms responsible have already gone under. Meanwhile, many who are ill from asbestos-related diseases won't be able to get timely compensation or, in some cases, any compensation. Unless the bill passes, Navy veterans, for example, will go uncompensated for diseases caused by asbestos on ships. Veterans are not allowed to sue the government, and many of the shipbuilders are long since bankrupt.

The bill will be debated and amended, and it may face a second attempted filibuster before it gets a vote. Some amendment may be reasonable at the margins, but the bill's central idea—to replace litigation with a $140 billion compensation fund to be financed by defendant companies and their insurers—must be preserved. Democrats complain that the fund won't have enough money to compensate asbestos victims; Republicans complain that the fund will have too much money, the raising of which will constitute a burden on small and medium-size firms. The fact that the bill is being attacked from both directions suggests that its authors, Sens. Arlen Specter (R–Pa.) and Patrick J. Leahy (D–Vt), have balanced competing interests in a reasonable manner.

Unfortunately, the bill's critics are not always so reasonable. Sen. Harry M. Reid of Nevada, the Democratic minority leader, has complained, ''One would have to search long and hard to find a bill in my opinion as bad as this.'' He has even described the legislation as the work of lobbyists hired by corporations to limit asbestos exposure. But the truth is that the bill's main opponents are trial lawyers, who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right Mr. Specter and Mr. Leahy are in fact model resisters of special interests who have spent more than two years crafting legislation that serves the public interest For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

Mr. SESSIONS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SUNUNU). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLACK HISTORY MONTH

Mr. AKAKA. Mr. President, it was 80 years ago when we first recognized February as Black History Month. Today, I am pleased to rise to add my voice to those honoring African Americans.

African Americans have both a tragic and vibrant history in the United States. This month is an opportunity to reflect upon their struggles, perseverance, and triumphs. African Americans have contributed to every segment of our community, ranging from politics and sports to medicine and business—and have greatly impacted the music industry. Our society continues to benefit from their service as national leaders, role models, athletes, scholars, and much more.

As you know, we cannot reflect on the achievements of our friends without remembering the civil rights movement. I vividly remember the movement's powerful call for nonviolent change. In 1963, my brother, Rev. Abraham Akaka, joined Dr. King for the famous March on Washington to help show Hawaii's support for the movement. Since 1926, Americans have dedicated the month to honoring the African American legacy. As a staunch supporter of civil rights, I am proud of the many ways that our country has evolved into a more fair and just nation since the movement.

Earlier this week, we bid a fond farewell to Coretta Scott King, who, along with her husband Dr. Martin Luther King, Jr., carried the torch against discrimination and bigotry everywhere. As a nation, we are indebted to the Kings and their life's work, and the work of countless other civil rights leaders. However, it is an unfortunate reality that, despite all of this progress, inequities remain. To properly pay tribute to their legacy, I believe that it is important that we use this month not just as a time for reflection, but also as a springboard for action.

In looking back at the progress of African Americans throughout the years and how it has changed the face of our Nation, it is clear that Black history is American history. As a nation, we must work together to close the gap on these important issues. Where possible, we must work in our communities on a local level, to ensure that all members of our society have equal opportunities to thrive and succeed.

This is also a national problem that requires a refocusing of national legislative priorities. Earlier this week, President Bush released his budget for fiscal year 2007, and I was disappointed that he did not devote the proper resources to these fundamental issues. President Bush's budget once again underfunds important health care and education priorities. It saddens me that so many people will be negatively affected by the President's proposals. Unfortunately, the administration has again demonstrated a disregard for domestic programs to improve the lives of working people at the expense of tax cuts for the wealthiest.

The administration needs to refocus its priorities. There are a variety of legislative initiatives that have been introduced this Congress which will address the shortcomings in education and health care for minorities, including African Americans. Earlier this year, I introduced S. 1580—the Healthcare Equality and Accountability Act—which establishes programs designed to improve the quality of and access to health care for minorities, while also improving health workforce accountability. My bill also includes a comprehensive diabetes education program. Diabetes is a disease that disproportionately impacts African Americans and other minorities such as native Hawaiians.

As a former teacher, I have seen the ways that education can open doors for people from all walks of life. For that reason, I also introduced S. 1521, the Teacher Acculturation Act of 2005. This bill recognizes that cultural incongruence along racial, socioeconomic, and ethnic vectors impedes learning in our classrooms. Too often, this makes it difficult for knowledge that needs to be transmitted between students aiming to learn and teachers seeking to teach. My bill helps teachers implement strategies to create a healthy learning environment for all students.

I am hopeful that my colleagues will join me in support of my bills, which address significant gaps in services for minorities and African Americans. I am proud to stand with my Democratic colleagues in working to support and empower African Americans in addressing important issues like education, health care, and the economy. As we move through the month of February, I am hopeful that we can work together to make America a better place for all Americans.

MAKE GUN VIOLENCE PREVENTION A PRIORITY

Mr. LEVIN. Mr. President, last month was declared ''Guns Aside Month'' by the DC City Council in honor of the grassroots campaign known by the same name. The Guns Aside campaign is run by a DC community organization named Reaching Out to Others Together, or ROOT.

Washington, DC, resident Kenneth Barnes established ROOT after his son was shot to death in 2001. According to its Web site, ROOT is ''committed to advocacy, education, and intervention on behalf of individuals and families who have been victimized by homicides. Its mission is to bring visibility and focus community and organizational resources on these homicides on behalf of families, while addressing the root causes of the systemic apathy that fosters a culture of violence in our communities today.''

Among other things, Kenneth Barnes and other ROOT members work with the DC police and local and national organizations to help address the needs of families who have been affected by gun violence and homicide. ROOT also works with community organizations to develop violence prevention strategies and better coordinate their efforts.

ROOT's Guns Aside campaign began in September 2004 as a multimedia outreach program targeted at young people. As part of the campaign, ROOT members have visited schools and held

workshops and mentoring programs while working to build cooperative relationships with law enforcement personnel, businesses, and local government officials. Kenneth Barnes and ROOT recently announced plans to expand the Guns Aside program to the top 15 cities affected by gun violence around the country.

Ironically, September 29, 2004 marked not only the start of the Guns Aside campaign, but also the passage of the misnamed ''District of Columbia Personal Protection Act'' by the House of Representatives. Among other things, that legislation would repeal local laws in Washington, D.C. that ban the sale and possession of unregistered firearms, require firearm registration, impose common sense safe storage requirements, and ban semiautomatic weapons.

The Senate did not make the mistake of passing that legislation during the 108th Congress. However, the bill was reintroduced last year and the National Rifle Association has labeled it a ''top legislative priority'' for this year.

I hope that the House and Senate Republican Congressional leadership will reward the work of organizations like ROOT and reject the efforts of NRA lobbyists. We should respect the will of the people of Washington, DC, with regard to local gun safety laws and work to support the efforts of antigun violence organizations around the country by passing commonsense gun safety legislation.

ADDITIONAL STATEMENTS

TRIBUTE TO DAVE SERFLING

• Mr. DAYTON. Mr. President, I rise today to commemorate Dave Serfling, a Minnesota farmer, father, friend, and activist who died tragically on January 8 while driving home from church. My thoughts and prayers go out to Dave's family, especially his wife Diane, his daughter Hannah, and his son Ethan. Along with Dave's immediate family, the family farming and sustainable agriculture community in Minnesota also experienced a great loss on that Sunday morning.

Dave raised hogs, beef cattle, sheep, and crops on 350 acres in southeast Minnesota's Fillmore County. During his 46 years, he made extraordinary contributions to sustainable agriculture. As a key member of the Land Stewardship Project's Federal Farm Policy Committee, Dave Serfling put his farming experience and analytical skills to work in developing a new farm program that would reward farmers for their environmental improvements to their farmlands. His ideas were championed by the great Senator from Iowa, Mr. HARKIN, who was then chairman of the Senate Committee on Agriculture, Nutrition, and Forestry. They became the genesis of Senator HARKIN's Conservation Security Act, which is now a lasting legacy to Dave as an important nationwide agriculture program.

Dave testified before the Senate for policies helping family farmers in Minnesota and across the Nation. His statement to the Senate Agriculture Committee on July 31, 2001, typified his philosophy on farm policy and farming itself: ''I am a big believer in farm ingenuity. . . . Please don't tell the farmers how to farm. Just tell us what results you want to see on working land, give us meaningful financial incentives, and we American farmers will not let you down.''

Dave's involvement with the 2002 farm bill was just one example of his contributions to sustainable agriculture and family farming. In 1987, he and his wife Diane were one of the original farm families to be involved in the Land Stewardship Project's Stewardship Farming Program, an on-farm research and information exchange initiative, which became a national model for farmer-to-farmer education. The Serflings continued to be involved in on-farm research and education during the past two decades.

Throughout the years, Dave wrote extensively for various publications, including the Minneapolis-based Star Tribune and AgriNews. His writings and speeches combined Dave's razor-sharp analytical abilities with his own family's experiences as stewards of their Fillmore County farm. The Serfling farm had also been featured in the Christian Science Monitor, the Des Moines Register, the Chicago Tribune, and on National Public Radio.

In recent years, Dave and Diane's farm has been recognized for protecting the environment and raising animals humanely, while also making a profit. In 2005, Dave and Diane were given an Outstanding Conservationist award by the Minnesota Association of Soil and Water Conservation Districts. That same year, their farm was recognized by the national company, Niman Ranch, as a top producer of high-quality pork.

Dave was also a role model for his children when it came to the idea of lifelong learning. In December 2005, he received a master's degree in professional agriculture from Iowa State University after taking classes, one at a time, for 16 years.

At the time of his death, Dave was working on new ideas for the 2007 farm bill. He was helping develop a new farm initiative for conservation, commodity program reform, and rural development based on local food and farming systems.

Dave had his priorities right. He loved his family, he cared for his farm, and he worked for the betterment of his community and society. He lived his faith. Dave Serfling's absence from farming, farm policy, and Minnesota will be felt for a long time to come. However, he has left a legacy of stewardship of the land and a practical vision for family farming that will benefit today's farmers and future generations. Thank you, Dave. Rest in peace.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 2271. A bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

S. 2273. A bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SUNUNU (for himself, Mr. CRAIG, Ms. MURKOWSKI, and Mr. HAGEL):

S. 2271. A bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes; read the first time.

By Mr. COLEMAN (for himself and Mr. JOHNSON):

S. 2272. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for host families of foreign exchange and other students from $50 per month to $200 per month; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. COLEMAN, Ms. COLLINS, Mr. DEWINE, Mr. GRASSLEY, Mr. SMITH, Mr. THUNE, Mr. SANTORUM, and Mr. JEFFORDS):

S. 2273. A bill to make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes; read the first time.

By Mr. DOMENICI:

S. 2274. A bill to establish a language arts facility for Homeland Security personnel and law enforcement officers; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SHELBY:

S. 2275. A bill to temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out

the national flood insurance program; considered and passed.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, and Mr. KERRY):

S. 2276. A bill to provide for fairness for the Federal judiciary; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 658

At the request of Mr. TALENT, the name of the Senator from Missouri (Mr. TALENT) was withdrawn as a cosponsor of S. 658, a bill to amend the Public Health Service Act to prohibit human cloning.

S. 722

At the request of Mr. SANTORUM, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 877

At the request of Mr. DOMENICI, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 877, a bill to provide for a biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government.

S. 1035

At the request of Mr. INHOFE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1035, a bill to authorize the presentation of commemorative medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th century in recognition of the service of those Native Americans to the United States.

S. 2253

At the request of Mr. DOMENICI, the names of the Senator from Wyoming (Mr. THOMAS) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. 2259

At the request of Mr. OBAMA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2259, a bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself and Mr. JOHNSON):

S. 2272. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for host families of foreign exchange and other students from $50 per month to $200 per month; to the Committee on Finance.

Mr. COLEMAN. Mr. President, I come to the floor today to introduce legislation with my colleague from South Dakota, Senator JOHNSON, that will help ease the financial burden for American families who open their homes to foreign exchange students from around the world, and offer an incentive to additional families to get involved in international exchanges.

Every year, approximately 30,000 American families host exchange students from all over the world. This exchange experience provides the families, their communities, the students and their schools with a unique educational opportunity to increase cultural awareness and understanding. And it often produces lifelong friendship as well.

Exchange programs are vital in today's interconnected world to build bridges of understanding. Youth exchange is particularly critical as it allows young people the opportunity to gain exposure to American families, culture and values early in their lives. Participants take home an understanding and often an appreciation for America's people, society and values.

At her confirmation hearing before the Senate Foreign Relations Committee early last year, Secretary of State Condoleezza Rice declared, ''I am a big proponent of student exchanges. It is the best policy we can have.'' She explained that, ''the presence of foreign students'' is ''one of the best things'' for American students; the experience ''changes the way we think about people, and the way they think about us'', and she called student exchange ''invaluable.''

We could not agree with her more. The legislation we introduce today will encourage more American families to participate in exchanges by increasing the monthly tax deduction for host families from $50 to $200 per month. The current $50 tax deduction has been in place since it was first introduced in the 1960s. It has never been increased to allow for inflation or to reflect the increasing costs associated with hosting a student. Our legislation will increase the monthly deduction with an annual adjustment for inflation.

While the increase is certainly not enough cover the expenses involved in feeding and housing a teenager, it will offer needed cost relief to American families, and most importantly, it will send a strong message to these families that our Nation values their contribution to increasing international understanding.

I hope that my Senate colleagues will join Senator JOHNSON and me in supporting this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2272

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Youth Exchange Support Act of 2006''.

SEC. 2. INCREASE IN CHARITABLE DEDUCTION FOR AMOUNTS PAID TO MAINTAIN CERTAIN STUDENTS AS MEMBERS OF TAXPAYER'S HOUSEHOLD.

(a) IN GENERAL.—Subparagraph (A) of section 170(g)(2) of the Internal Revenue Code of 1986 (relating to amounts paid to maintain certain students as members of taxpayer's household) is amended by striking ''$50'' and inserting ''$200''.

(b) ADJUSTMENT FOR INFLATION.—Section 170(g) of such Code is amended by adding at the end the following new paragraph:

''(5) ADJUSTMENT FOR INFLATION.—

''(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2006, the $200 amount contained in paragraph (2)(A) shall be increased by an amount equal to—

''(i) $200, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 2005' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the next highest multiple of $10.''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2005.

By Mr. DOMENICI:

S. 2274. A bill to establish a language arts facility for Homeland Security personnel and law enforcement officers; to the Committee on Homeland Security and Governmental Affairs.

Mr. DOMENICI. Mr. President, I rise today to introduce the Foreign Language Training Act of 2006, a bill that I believe is necessary for the success of our Department of Homeland Security personnel and other Federal agents.

As you may know, our Department of Defense employees receive foreign language education and training at the Defense Language Institute Foreign Language Center. This school has provided training for American forces involved in arms control treaty verification, the war on drugs, and Operation Desert Storm.

I believe the Department of Defense's success can provide guidance for Department of Homeland Security personnel and Federal law enforcement agents who need foreign language skills. The Foreign Language Training Act of 2006 provides for such guidance by creating a facility similar to the Defense Language Institute Foreign Language Center for these Federal employees.

My bill requires the Secretary of Homeland Security and other Federal agency leaders to identify employees who need foreign language education and plan for the provision of such education. To fully utilize existing Federal assets, the Foreign Language Training Act requires this training to take place at the Federal Law Enforcement Training Center in Artesia, New Mexico. FLETC is already planning to increase its language training capabilities and construct new language arts facilities in Artesia to accommodate the increased number of border patrol trainees being sent there, so it makes sense for other DHS employees and Federal agents to utilize this facility as well.

Mr. President, the Defense Language Institute Foreign Language Center has prepared our soldiers for World War II, the Cold War, the Korean War, and the Vietman conflict. It continues to provide such training today. I believe that similar training is necessary for the men and women securing our homeland, and the Foreign Language Training Act of 2006 provides for such education.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Foreign Language Training Act of 2006''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''executive agency'' has the same meaning as in section 105 of title 5, United States Code, except that the term does not include the Department of Defense;

(2) the term ''law enforcement officer'' has the same meaning as in section 8331 of title 5, United States Code; and

(3) the term ''Secretary'' means the Secretary of Homeland Security.

SEC. 3. LANGUAGE ARTS PROGRAM AND FACILITY.

(a) PROGRAM EXPANSION.—The Secretary shall expand the language arts program at the Federal Law Enforcement Training Center in Artesia, New Mexico, to provide training for the Department of Homeland Security personnel and law enforcement officers identified under section 4.

(b) FACILITY.—The Secretary is authorized to construct a language arts facility at the Federal Law Enforcement Training Center in Artesia, New Mexico.

SEC. 4. TRAINING REQUIREMENT.

(a) HOMELAND SECURITY.—The Secretary shall—

(1) identify any employee of the Department of Homeland Security for whom foreign language education is necessary; and

(2) require foreign language education for any employee identified under paragraph (1).

(b) LAW ENFORCEMENT.—The head of each executive agency shall—

(1) identify any law enforcement officer employed by such executive agency for whom foreign language education is necessary; and

(2) require foreign language education for any law enforcement officer identified under paragraph (1).

(c) TRAINING.—Foreign language education for any individual identified under subsection (a)(1) or (b)(1) shall be provided at the language arts facility authorized under section 3(b).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, and Mr. KERRY):

S. 2276. A bill to provide for fairness for the Federal judiciary; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Fairness in Judicial Salaries Act.

This legislation is needed to prevent a continuing decline in the pay of our Federal judges and prevent damage to the quality of our judiciary.

Impartial, dedicated, and wise judges are critical to our justice system. Nevertheless, in the past three decades, our Federal judges have been neglected.

Since 1969, the salaries of Federal judges have declined by nearly 24 percent in inflation adjusted dollars. By comparison, in the same time period the salary of the average American worker has increased over 15 percent.

Since 1993, when Congress last passed a comprehensive revision of Federal salaries, real judicial pay has declined about 10 percent.

The drop in judicial pay is even more stark when compared to judges' peers in the legal community.

In 1969, the salary of a Federal district court judge was about 20 percent higher than the salary of a top law school dean and about 30 percent higher than that of a senior law professor at a top law school. In contrast, today, top law school deans make twice as much as district court judges, and senior law professors at those schools make nearly 50 percent more.

Today, partners at major law firms routinely make three, four or five times what Federal judges make. Furthermore, first year law school graduates at these law firms make more than experienced Federal judges.

While judges are making less, they are also working more. In the same time period that judges pay has declined by nearly 24 percent, the caseload for district court judges has climbed by 58.4 percent and the caseload of Circuit Court judges has jumped 211.4 percent.

While fairness alone would require a reasonable salary for judges, the growing pay disparity between judges and other members of the legal profession poses a real threat to the quality of our judiciary.

In order to ensure that our judiciary can continue to attract—and—keep top attorneys, it is imperative that judges' salaries be increased to at least make up for some of the loss in real pay that has taken place in the last 30 years.

In 2003, the National Commission on the Public Service, also known as the Volcker Commission, concluded that ''the lag in judicial salaries has gone on too long, and the potential for the diminished quality in American jurisprudence is now too large.''

In a July 15, 2002 statement to the National Commission on the Public Service, the late Chief Justice Rehnquist said inadequate compensation seriously compromises the judicial independence fostered by life tenure. The prospect that low salaries might force judges to return to the private sector rather than stay on the bench risks affecting judicial performance.

Chief Justice Rehnquist's views were echoed by new Chief Justice Roberts in his State of the Judiciary Address from earlier this year. Chief Justice Roberts said the following:

> If judges' salaries are too low, judges effectively serve for a term dictated by their financial position rather than for life. Figures gathered by the Administrative Office show that judges are leaving the bench in greater numbers now than ever before. In the 1960s, only a handful of district and appellate court judges retired or resigned; since 1990, 92 judges have left the bench. Of those, 21 left before reaching retirement age. Fifty-nine of them stepped down to enter the private practice of law. In the past five years alone, 37 judges have left the federal bench—nine of them in the last year.
>
> There will always be a substantial difference in pay between successful government and private sector lawyers. But if that difference remains too large, as it is today, the judiciary will over time cease to be made up of a diverse group of the Nation's very best lawyers. Instead, it will come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

Many of the judges that have left the bench in recent years cited financial considerations as a major factor in their decisions to leave the bench.

In my home State of California, several Federal judges have gone on the record to say that they left the Federal bench because of financial pressures. Some of these judges have even taken jobs in the California State judiciary, since the State courts offer better salaries than the Federal bench.

As a result of the linkage of judicial salaries with the salaries of Members of Congress, when Congress has voted to deny itself a cost-of-living adjustment, as it has in 5 of the last 12 years, it has simultaneously denied all Federal judges cost-of-living adjustments, as well. Consequently, the real pay of judges has declined.

I am not suggesting that judges be paid as much as partners at law firms; however, they should receive a fair salary. The legislation that I introduce today, the Federal Judicial Fairness Act, provides a straightforward solution.

First, the act terminates the linkage of congressional pay increase to judicial pay increases, so that Congress's decision to deny itself pay raises will not also place that burden on Federal judges.

Second, the act increases the salaries of all Federal judges by 16.5 percent, in order to at least partially make up for the decline in real pay for judges over the last three decades. In 2003, both President Bush and Chief Justice Rehnquist agreed that a pay adjustment of at least 16.5 percent was needed.

Finally, the act would provide Federal judges with annual cost-of-living adjustments based on the employee cost Index, an index already used by the Federal Government to help Federal salaries keep up with inflation.

The cost of this salary increase would be only $41.3 million, a relatively small sum to safeguard the quality and independence of our judiciary.

Our Federal judges make many sacrifices in serving our Nation and a cut in pay is one of these sacrifices. However, the disparity between judicial salaries and salaries in the rest of the legal profession has grown so wide that the quality of our judicial system may be endangered. It is time to provide these critical public servants with a fair salary that will guarantee the future health of the judiciary.

I urge my colleagues to support this important legislation.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2276

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Judicial Fairness Act of 2006''.

SEC. 2. JUDICIAL COST-OF-LIVING INCREASES.

(a) REPEAL OF STATUTORY REQUIREMENT RELATING TO JUDICIAL SALARIES.—Section 140 of the resolution entitled ''A Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes.'', approved December 15, 1981 (Public Law 97–92; 95 Stat. 1200; 28 U.S.C. 461 note), is repealed.

(b) AUTOMATIC ANNUAL INCREASES.—Section 461(a) of title 28, United States Code, is amended to read as follows:

''(a)(1) Subject to paragraph (2), effective on the first day of the first applicable pay period beginning on or after January 1 of each calendar year, each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year that begins in the preceding calendar year.

''(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.''.

(c) JUDICIAL SALARY INCREASES.—Effective on the first day of the first applicable pay period that begins on or after the date of the enactment of this Act, the rate of basic pay for the Chief Justice of the United States, an Associate Justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, a judge of the United States Court of International Trade, a bankruptcy judge, and a full-time magistrate judge shall be increased in the amount of 16.5 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

SEC. 3. COORDINATION RULE.

If a pay adjustment under section 2 is to be made for an office or position as of the same date as any other pay adjustment affecting such office or position, the adjustment under section 2 shall be made first.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2759. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2760. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2761. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2762. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2763. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2764. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2765. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2766. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2759. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 370, lines 9 through 11, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2760. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 385, line 1, strike all through page 392, line 5.

SA 2761. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 370, lines 9 through 11, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2762. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 1, strike all through page 392, line 5.

On page 370, lines 9 through 11, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2763. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 368, line 23, strike all through page 370, line 24 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

SA 2764. Mr. INHOFE submitted an amendment intended to be proposed to

amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, lines 9 through 11, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

On page 368, line 23, strike all through page 370, line 24 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

On page 376, line 2, strike all through the matter before line 1 on page 385.

On page 385, line 1, strike all through page 392, line 5.

SA 2765. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 363, between lines 18 and 19, insert the following:

(4) MEDICAL CRITERIA FOR CLAIMS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), the medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

(B) NONPREEMPTION OF CERTAIN STATE CRITERIA.—If any medical criterion under State law of the State in which a civil action described under paragragh (1) is filed has a greater requirement than any medical criterion of the medical criteria under section 121(d), the medical criterion of that State shall apply.

On page 363, line 19, strike ''(4)'' and insert ''(5)''.

On page 364, line 15, strike ''(5)'' and insert ''(6)''.

SA 2766. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 365, insert between lines 118 and 19, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES AND APPLICATION OF MEDICAL CRITERIA.—

(A) ATTORNEY'S FEES.—

(i) DEFINITION.—In this subparagraph, the term ''reasonable fees and expenses of attorneys'' means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(I) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(II) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

(ii) LIMITATION.—In any civil action described under paragraph (1)—

(I) the limitations on attorney's fees under section 104(e) shall apply; or

(II) a court may award reasonable fees and expenses of attorneys.

(B) MEDICAL CRITERIA FOR CLAIMS.—

(i) IN GENERAL.—Except as provided under clause (ii), the medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

(ii) NONPREEMPTION OF CERTAIN STATE CRITERIA.—If any medical criterion under State law of the State in which a civil action described under paragragh (1) is filed has a greater requirement than any medical criterion of the medical criteria under section 121(d), the medical criterion of that State shall apply.

On page 363, line 19, strike ''(4)'' and insert ''(5)''.

On page 364, line 15, strike ''(5)'' and insert ''(6)''.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Friday, February 10, 2006, at 9:30 a.m. for a hearing titled, ''Hurricane Katrina: The Roles of DHS and FEMA Leadership.''

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL FLOOD INSURANCE PROGRAM ENHANCED BORROWING AUTHORITY ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2275, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2275) to temporarily increase the borrowing authority of the Federal Emergency Management Agency for carrying out the national flood insurance program.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2275) was read the third time and passed, as follows:

S. 2275

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Flood Insurance Program Enhanced Borrowing Authority Act of 2006''.

SEC. 2. INCREASE IN BORROWING AUTHORITY.

The first sentence of subsection (a) of section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), as amended by the National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005 (Public Law 109–106; 119 Stat. 2288), is amended by striking ''$18,500,000,000'' and inserting ''$21,200,000,000''.

SEC. 3. EMERGENCY SPENDING.

Amendments made pursuant to this Act are designated as emergency spending, as provided under section 402 of H. Con. Res. 95 (109th Congress).

MEASURES READ THE FIRST TIME—S. 2271 AND S. 2273

Mr. FRIST. I understand there are two bills at the desk. I ask for their first reading, en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

A bill (S. 2273) to make available funds included in the Deficit Reduction Act of 2005 for Low-income Home Energy Assistance Act of 1981 program for fiscal year 2006, and for other purposes.

Mr. FRIST. I now ask for a second reading, and in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, en bloc.

The PRESIDING OFFICER. The objection is heard. The bills will be read for the second time on the next legislative day.

EXECUTIVE SESSION

NOMINATION OF THOMAS O. BARNETT TO BE AN ASSISTANT ATTORNEY GENERAL

Mr. FRIST. I ask unanimous consent the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: No. 437, Thomas O.

Barnett. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF JUSTICE

Thomas O. Barnett, of Virginia, to be an Assistant Attorney General.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDERS FOR MONDAY, FEBRUARY 13, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon on Monday, February 13; I further ask following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Chair then lay before the Senate the House message to accompany H.R. 4297, the tax relief bill. I further ask that the Senate then insist upon its amendment and agree to the request of the House for a conference.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, on Monday, the Senate will consider H.R. 4297, the Tax Relief Act of 2005 for the third time. Unfortunately, there will be multiple motions to instruct the conferees from the other side of the aisle before we send this bill to conference. Those motions will be offered on Monday. Senators can therefore expect multiple votes on Monday. There are 10 hours available by statute for consideration of these motions. Therefore, these votes will occur later on Monday. I anticipate those votes to begin sometime after 8 p.m.

We will then resume consideration of the asbestos bill next week. Pending is the motion to waive the point of order. We have Senators who would like additional debate. We will be talking to Senators on both sides of the aisle to determine the best time to schedule that vote following their statements. Needless to say, there is much work to be done before our next recess, the Presidents Day recess, at the end of next week. Therefore, I expect we will be voting Monday, Tuesday, Wednesday, Thursday, and Friday in order to complete our work.

In addition to the asbestos bill and the Tax Relief Act, we need to address the PATRIOT Act before adjourning. It is going to be a long, arduous week. I thank Members for their patience in advance as we move these vital priorities along.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 13, 2006

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:09 p.m., adjourned until Monday, February 13, 2006, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate February 10, 2006:

DEPARTMENT OF DEFENSE

DORRANCE SMITH, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE VICTORIA CLARKE, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GORDON ENGLAND, OF TEXAS, TO BE DEPUTY SECRETARY OF DEFENSE, VICE PAUL D. WOLFOWITZ, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

AMTRAK

ENRIQUE J. SOSA, OF FLORIDA, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FLOYD HALL, OF NEW JERSEY, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF TRANSPORTATION

ANDREW B. STEINBERG, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE KARAN K. BHATIA.

INTER-AMERICAN FOUNDATION

ROGER W. WALLACE, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NADINE HOGAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING JUNE 26, 2008 (REAPPOINTMENT), TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF STATE

ELLEN R. SAUERBREY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF STATE (POPULATION, REFUGEES, AND MIGRATION), VICE ARTHUR E. DEWEY, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

C. BOYDEN GRAY, OF THE DISTRICT OF COLUMBIA, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE EUROPEAN UNION, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, VICE ROCKWELL A. SCHNABEL, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NATIONAL LABOR RELATIONS BOARD

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

RONALD E. MEISBURG, OF VIRGINIA, TO BE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD FOR A TERM OF FOUR YEARS, VICE ARTHUR F. ROSENFELD, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

PETER N. KIRSANOW, OF OHIO, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RONALD E. MEISBURG, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL MEDIATION AND CONCILIATION SERVICE

ARTHUR F. ROSENFELD, OF VIRGINIA, TO BE FEDERAL MEDIATION AND CONCILIATION DIRECTOR, VICE PETER J. HURTGEN, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

STEPHEN GOLDSMITH, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2010 (REAPPOINTMENT), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF HOMELAND SECURITY

JULIE L. MYERS, OF KANSAS, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY, VICE MICHAEL J. GARCIA, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

TRACY A. HENKE, OF MISSOURI, TO BE EXECUTIVE DIRECTOR OF THE OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS, DEPARTMENT OF HOMELAND SECURITY, VICE C. SUZANNE MENCER, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

EXECUTIVE OFFICE OF THE PRESIDENT

BENJAMIN A. POWELL, OF FLORIDA, TO BE GENERAL COUNSEL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL ELECTION COMMISSION

STEVEN T. WALTHER, OF NEVADA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2009, VICE SCOTT E. THOMAS, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

HANS VON SPAKOVSKY, OF GEORGIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011, VICE BRADLEY A. SMITH, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ROBERT D. LENHARD, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2011, VICE DANNY LEE MCDONALD, TERM EXPIRED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be lieutenant

STEPHEN S. MEADOR

CONFIRMATION

Executive Nomination Confirmed by the Senate Friday, February 10, 2006:

DEPARTMENT OF JUSTICE

THOMAS O. BARNETT, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.